

TRANSCRIPT OF RECORD

Supreme Court of the United States
OCTOBER TERM, 1917

No. 211

T. H. SMALLWOOD, W. F. SMALLWOOD, A. D.
SMALLWOOD, ET AL., ETC., PETITIONERS,

vs.

JUAN G. GALLARDO, TREASURER OF PORTO
RICO

No. 212

ADOLFO VALDES ORDONEZ, SALVADOR GARCIA,
VICTOR OCHOA, ET AL., ETC., PETITIONERS,

vs.

JUAN G. GALLARDO, TREASURER OF PORTO
RICO

No. 213

INSULAR MOTOR CORPORATION, PETITIONER,

vs.

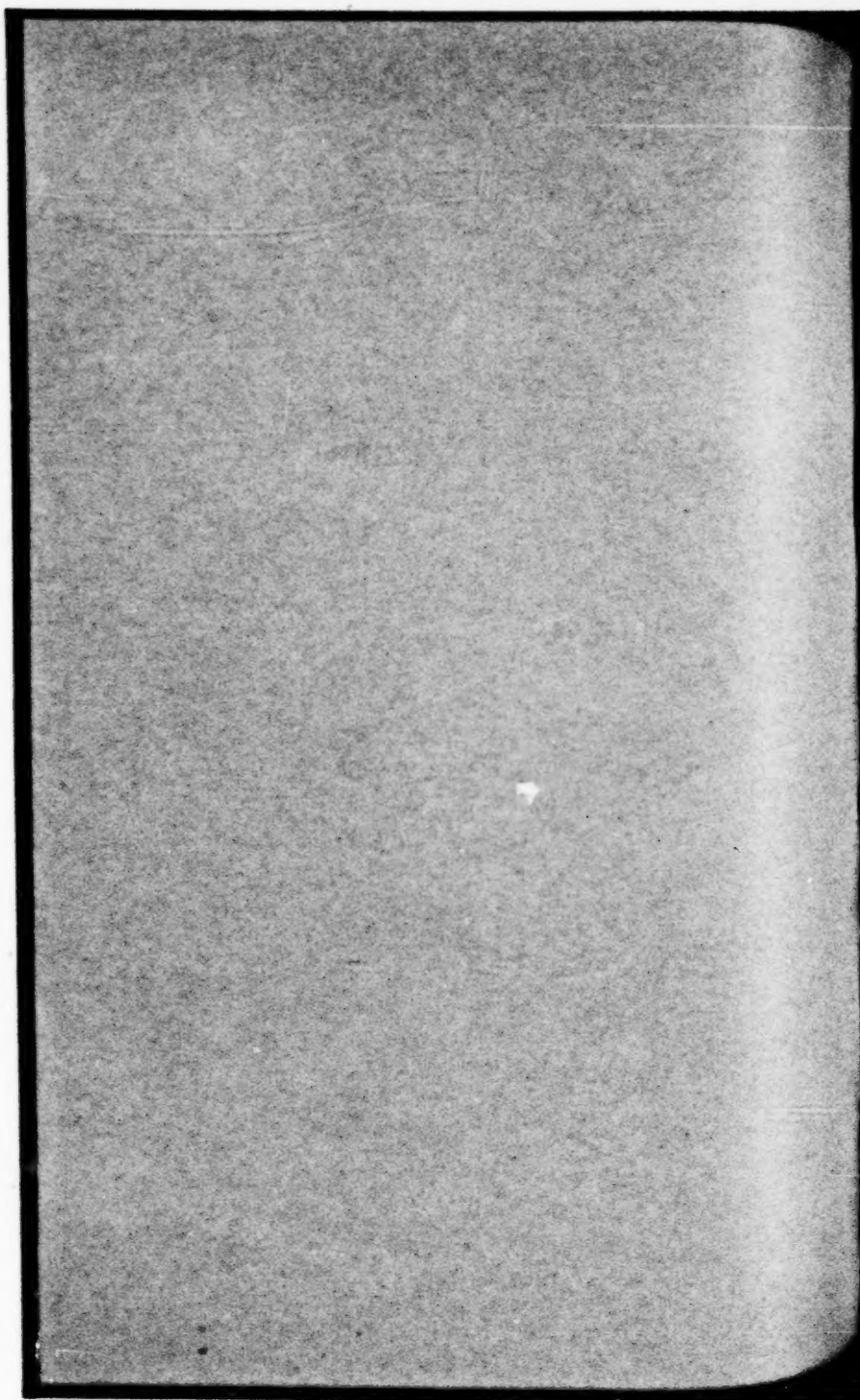
JUAN G. GALLARDO, TREASURER OF PORTO
RICO

ON WRIT OF HABEAS CORPUS TO THE UNITED STATES CIRCUIT
COURT OF APPEALS FOR THE FIRST CIRCUIT

FORWARDED FOR CHIEF CLERK FILED APRIL 2, 1918

CHIEF CLERK CHAS. H. HAY

(32,585, 32,586, 32,587)



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SUPREME COURT OF THE UNITED STATES

OCTOBER TERM, 1926

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INSULAR MOTOR CORPORATION, PETITIONER,

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JUAN G. GALLARDO, TREASURER OF PORTO RICO

ON PETITION FOR WRITS OF HABEAS CORPUS TO THE UNITED
STATES CIRCUIT COURT OF APPEALS FOR THE FIRST
CIRCUIT

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**UNITED STATES CIRCUIT COURT OF APPEALS
FOR THE FIRST CIRCUIT**

OCTOBER TERM, 1926

No. 1904

T. H. SMALLWOOD et al. (SMALLWOOD BROTHERS), Plaintiffs,
Appellants,

v.

JUAN G. GALLAGHER, Treasurer, Defendant, Appellee

No. 1908

ANIBERTO VALDES OLIVERA et al., Plaintiffs, Appellants,

v.

JUAN G. GALLAGHER, Treasurer, Defendant, Appellee

No. 1943

INSULAR MOTOR CORPORATION

v.

SAME

Appeals from the District Court of the United States for
the District of Porto Rico

From Final Decrees (Wells, J.), January 18, 1926, and
September 18 and 30, 1925.

Transcript of Record

Certified Copy of Record and All Proceedings in Said
Causes to and Including February 2, 1927

[fol. 1] IN UNITED STATES DISTRICT COURT, DISTRICT OF
PORTO RICO

No. 1285. Equity

T. H. SMALLWOOD, W. F. SMALLWOOD, A. D. SMALLWOOD, E.
A. SMALLWOOD, G. C. SMALLWOOD, George A. Stuckert,
Doing Business under the Firm Name of "Smallwood
Brothers," Complainants,

v.

JUAN G. GALLARDO, Treasurer of Porto Rico, Defendant

Bill to Recover an Illegal Tax and for an Injunction

AMENDED BILL OF COMPLAINT—Filed August 14, 1925

To the Honorable Ira K. Wells, Judge of the District Court
of the United States for Porto Rico:

Now come the complainants above named, by the under-
signed solicitor, and respectfully show:

[fol. 2] 1. That the complainants are all of age, citizens
of the United States, some of them residents of Porto Rico,
and others of the Republic of Panama, as follows:

T. H. Smallwood, W. F. Smallwood and George A.
Stuckert are residents of San Juan within this district, and
A. D. Smallwood, E. A. Smallwood, G. C. Smallwood and
Ella Smallwood are residents of Panama.

The defendant Juan G. Gallardo is an American citizen
and the Treasurer of Porto Rico, with residence within this
district, duly appointed and qualified, and acting as such
Treasurer during all times referred to in this amended bill
of complaint.

2. The complainants do business in Porto Rico under the
firm name of "Smallwood Brothers"; and their only and
exclusive business consists in the sale of automobiles and
automobile accessories, and each and all of the goods and

merchandises sold by the complainants in their regular course of business are manufactured, produced and built in the United States, principally in the States of Michigan and New York, and brought into Porto Rico under regular invoices and bills of lading showing the state from which they are thus brought within the jurisdiction; said goods, wares and merchandises being sold by the complainants to the public at large in exactly the same conditions in which they are brought into Porto Rico without any process of further manufacture, or improvement or betterment than that of their original condition.

And complainants allege that they are engaged in the importation of auto cars from the United States to be sold in Porto Rico; that the complainants have invested in said business more than one hundred thousand dollars and the continuation and development of said business is based entirely upon the importation of motor cars from the United States as aforesaid; that the complainants have imported during the past twelve months motor cars on which taxes hereinafter mentioned would exceed the sum of twenty thousand dollars; all of which is levied against importations upon goods manufactured in the United States and [fol. 3] imported therefrom; that complainant is and will continue to import said goods during this year upon which, unless the relief herein invoked is granted, it will be compelled to pay the said taxes to an amount of not less than twenty five thousand dollars; that the value of motor cars made in the United States to be imported by the complainant this year will amount to not less than two hundred thousand dollars.

3. That the Legislative Assembly of Porto Rico passed an Act, which was duly approved by the Governor, on the twenty eighth day of July, 1923, entitled "An Act to provide revenues for the People of Porto Rico by levying certain excise and license taxes for the practice of certain professions, industries or business; to regulate the manufacture, use and sale of alcoholic preparations and other articles; to impose certain penalties; to repeal the excise and license tax laws now in force, and for other purposes; which act subsequently amended by an Act of August 27, 1923, and by another Act of June 23, 1924;" said act-

being commonly known as the Excise Tax Law of Porto Rico; and that by virtue of Tax Law an Excise Tax upon the goods, wares and merchandises, sold by the complainants, which complainants allege is an illegal oppressive and wrongful tax, for the reasons to be hereinafter alleged, is provided for as follows:

"Section 20. That there shall be levied, collected and paid, for one time only, as an internal revenue tax on each of the following articles: * * *

18. Motor vehicles. On every motor vehicle, automobile, motor cycle, aeroplane, hydroplane, dirigible, side car for motorcycles, motor for automobiles, bicycle, launch, auto-truck chassis, auto-wagon, auto tractor, parts and accessories for all of the aforesaid articles, solid or pneumatic tires, inner tubes therefor, excluding tools, screws, tube-valves, spark plugs and light bulbs, piston rings, felt washers, steel ball-bearings, lamp lenses, radiator rubber tubes, clamps therefor, vibrators and tire tube patches, produced, [fol. 4] manufactured, sold or used in Porto Rico, a tax of ten (10) per cent ad valorem.

Persons, not residents of Porto Rico, using their own automobiles for personal use only, shall be exempt from payment of tax for a period not to exceed sixty days from the date when they began to use said automobile. On the expiration of that period, or before, if the automobile is destined for other purposes than the above mentioned, the tax shall be paid."

4. Complainants respectfully allege that in said law the following sections have determined the procedure to make such illegal and unlawful tax effective, and prescribing penalties for the refusal to pay said tax:

"Section 21. The Tax hereby prescribed on articles for sale, use, consumption or exhibition in Porto Rico, except as provided in Section 20 of this Act, shall be levied as soon as they are on the market in possession of a dealer or commission merchant or the representative thereof in this island, who shall be responsible for the payment of said taxes upon transferring said articles to another dealer or consumer, or upon acquiring them or having them in his

possession, and who shall pay such taxes in one of the two following forms in accordance with such regulations as the Treasurer of Porto Rico may prescribe for the purpose: (a) Upon acquiring the taxable articles and having them in his possession, by making entries of receipt and delivery in the stock and receipt and delivery book, and by simultaneously paying the tax by cancelling the corresponding stamps on an internal revenue invoice; or (b) as he disposes of the taxable articles. Persons acquiring taxable articles through channels other than the aforesaid dealers or commission merchants or their representatives, shall pay said taxes as soon as they obtain possession of the articles and in accordance with the definition of *ad valorem* contained in this Act.

[fol. 5] "Dealers shall be responsible for the payment of said tax when he acquires taxable articles, if such tax shall not have been paid.

"Section 34. All persons dealing in taxable merchandise, or who have or shall have had such merchandise in store, shall furnish the Treasurer of Porto Rico or his duly authorized representatives, all such information as may be required of them in connection with said merchandise.

"Section 35. From and after the date on which this Act takes effect, every person acquiring any taxable articles for his personal use or consumption, on which the tax specified in this Act has not yet been paid, shall, as soon as coming into possession thereof, file an affidavit, with the Treasurer of Porto Rico, stating the class and quantity of the articles acquired, their value, and any other information that the Treasurer of Porto Rico may by regulations prescribe.

"From and after the date on which this Act takes effect, every person, who by himself or through his agents or representative, acquires taxable articles for sale or transfer to another merchant or consumer, and on which the taxes specified by this Act have not been paid, shall keep in his commercial establishment, from which it shall not be removed, except by authorization of the Treasurer of Porto Rico, an official book wherein entries shall be made of all taxable articles at the time they are acquired, and the corresponding entry at time of selling or otherwise

disposing of them, and further, furnish all other information that the Treasurer of Porto Rico may by regulation prescribe for the purpose of determining the value and other circumstances in connection with such articles; provided, That upon the taking effect of this Act, the stock on the market shall be classified as follows:

"(a) That on which the tax has already been paid;

"(b) That subject to the payment of taxes on which such taxes have not been paid;

[fol. 6] "(c) That which was not subject to the payment of taxes prior to the date on which this Act takes effect; Provided further, that merchandise already acquired under classes (a), (b) and (c), shall not be taxable under this Act, provided, further, that the Treasurer of Porto Rico is hereby empowered to adopt such necessary measures not in conflict herewith, as shall prevent any person from fraudulently evading or attempting to evade, the payment of taxes herein provided for, making merchandise acquired during the time this Act is in effect, appear if acquired prior to the date on which it takes effect; And, provided, further, that every person who, availing himself of such means shall evade or attempt to evade payment of said taxes, shall be deemed guilty of misdemeanor, and when the court in whose jurisdiction the offense has been committed convicts such persons, he shall be fined in a sum of not less than one hundred (100) dollars, or shall be sentenced to prison for a term of not less than thirty (30) days.

"Section 36. That articles subject to tax, used by agents or commission merchants as samples for the purpose of soliciting business, shall be exempt from the payment of the said tax upon furnishing a bond in such amount and in such form and condition as the Treasurer of Porto Rico may demand, and if for any reason the said articles shall be disposed of for consumption or use in Porto Rico, the excise tax, as prescribed in this Act, shall be paid thereon.

"Section 37. That all taxes provided for in this Act shall be paid by affixing and cancelling internal revenue stamps on such documents and articles, as for such purposes the Treasurer of Porto Rico may prescribe. Such stamps shall be furnished by the Treasurer of Porto Rico, on requisition,

to collectors of internal revenue, in such quantities as may be necessary for local needs; Provided, that for the purpose of identification of certain taxable articles such as [fol. 7] perfumery, medicines, arms and others which, in the judgment of the Treasurer of Porto Rico, it may be necessary to identify so as to determine whether or not the taxes required by this Act have been paid, the Treasurer of Porto Rico is hereby authorized, through the promulgation of rules and regulations to cause to be affixed to the said articles stamps or other adequate signs which shall be furnished gratis to taxpayers by the Treasurer of Porto Rico; provided further, that the Treasurer of Porto Rico may affix such stamps on taxable articles acquired while former excise tax laws have been in force and which articles are in the market when this act takes effect.

"The lack of such stamps or signs on the articles required by regulations, shall constitute prima facie evidence that the tax has not been paid.

"Section 38. That every person who fails to pay the taxes herein prescribed, at such time and in such manner as this Act provided, except as otherwise herein determined, shall be guilty of misdemeanor, and the merchandise on which said tax has not been paid may be attached by the Treasurer of Porto Rico or by his agents and by him sold at public auction to indemnify the People of Porto Rico for the sums defrauded by the violator.

"Section 39. That every person who shall have in his possession or has on any premises under his control, and merchandise subject to tax under the provision of this Act, on which such tax has not been paid, except such as are duly entered in the official book of a licensed manufacturer, or of a dealer, shall be guilty of misdemeanor, and the merchandise may be seized by the Treasurer of Porto Rico or by his agents, and by him sold at public auction to indemnify the People of Porto Rico for the amounts defrauded by the violator, and the license of such person, if a merchant, may be revoked."

[fol. 8] 5. That the Legislative Assembly of Porto Rico passed a law, duly approved by the Governor, on the 23d of June, 1924, entitled "An Act providing for the payment of taxes under protest, etc.," as follows:

"Section 1. Whenever a taxpayer believes that he should not pay a tax or part thereof because he understands that it is illegal, excessive or wrongful, he shall, however, have the obligation to pay the same in full upon request of the collector of taxes of his district, or of the official in charge of the collection of taxes, and shall ask the said collector or the said official in charge of the collection of taxes, should he desire to make any claim, to endorse the tax receipt specifically stating whether the said protest refers to the whole or to a part of the tax paid under protest, and setting forth the exact amount protested. The said endorsement shall be signed by the taxpayer and by the collector or officer in charge of the collection of taxes.

"Section 2. After payment is made, the collector of taxes or the official in charge of the collection of taxes, shall cover the sum collected into the Treasury of Porto Rico, reporting to the Treasury the total amount of the tax, as well as the part thereof paid under protest.

"Section 3. The moment that a tax paid under protest is received, the part thereof not protested, if there be any, shall be considered as all other receipts from taxes, the amount of which is to be applied to the obligations of the Insular Government, and in the case of property taxes the part of said tax pertaining to the respective municipalities pursuant to law, shall be paid over to them. The protested part shall be covered into a special fund to be known as 'Taxes paid under protest. Trust Fund.'

"Section 4. A taxpayer who shall have paid under protest the whole or part of any tax shall, within a term of not to exceed thirty days from and after the date of payment, sue the Treasurer of Porto Rico in a court of competent jurisdiction to secure the return of the amount protested. The Treasurer of Porto Rico, through the Attorney General or through the official designated by the latter from his department, shall answer the said suit within the term granted by law for the filing of answers and shall make therein, in their order, allegations to strike out particulars of the complaint and demurrers.

"When the case is ready for trial the court before which the action is pending shall fix the day for the trial thereof without the necessity of a request from the parties, first serving due notice on them.

"When final decision is rendered, if favorable to the taxpayer, the Treasurer of Porto Rico shall proceed to return to him the amount directed in the decision to be charged against the fund 'Taxes paid under protest—Trust Funds,' referred to in section 3 hereof.

"If the decision be favorable to the People of Porto Rico, the Treasurer shall cover from the fund known as 'Taxes paid under protest—Trust Fund,' into the proper fund such amount of the tax as directed by the court in its decision, turning over to the respective municipalities the proportion established by law in cases of property taxes.

"Section 5. Either party may appeal to a higher court by filing in the court a quo his appeal within ten days after the decision is rendered, as provided by section 4 of this act; provided, that if the taxpayer be the appellant he shall file, together with the petition for appeal and in the court appealed from, a bond in such sum as the court shall fix to answer for such costs, expenses, and damages as the People of Porto Rico might suffer by reason of said action.

"The said appeal shall prosecute pursuant to the provisions of law for appeals in civil cases, and the court of appeals shall hold the hearing with preference over any other matter pending before it.

"Section 6. Any taxpayer filing a suit against the Treasurer of Porto Rico in accordance with the provisions of this Act shall attach to the said suit a receipt for the tax paid under protest, or a certified copy of said receipt.

"Section 7. That the sum of fifteen thousand (15,000) dollars or such part thereof as may be necessary is hereby appropriated, out of any funds in the Insular Treasury, not otherwise appropriated, for the payment by the Treasurer of Porto Rico of such costs as by judgment of any competent court may be allowed to any taxpayer who shall have brought suit pursuant to this Act.

"Section 8. Act No. 17 of May 13, 1920, as well as all laws or parts of laws in conflict herewith are hereby repealed; provided, that any action, proceeding or right arising from and exercised under the act hereby repealed, shall continue under the protection and provisions thereof until its termination.

"Section 9. It is hereby declared that an emergency exists for the immediate taking effect of this Act, and therefore the same shall take effect immediately after its approval."

6. That in accordance with said acts of the Legislature of Porto Rico as hereinbefore stated the complainants are bound by the very nature of their business and occupation to pay an oppressive duty upon every article, goods, wares or merchandises brought from the United States into Porto Rico amounting to 10 per cent ad valorem over said goods, wares and merchandises, and if said excise duty would be paid under protest the complainants would be bound to make a protest for every case whenever a sale is effected, amounting to several thousand in one single year; and complainants would be bound to file a suit in every case protested in order to recover the amount of the excise, all of which would amount to a multiplicity of suits and legal proceedings of an unwarranted amount and put the complainants to great expense of time and money.

7. That by an Act of Congress of the United States of America of April 12, 1900, it was enacted:

[fol. 11] "Whenever the Legislative Assembly of Porto Rico shall have enacted and put into operation a system of local taxation to meet the necessities of the government of Porto Rico, by this Act established, and shall by resolution duly passed so notify the President, he shall make proclamation thereof, and thereupon all tariff duties on merchandise and articles going into Porto Rico from the United States or coming into the United States from Porto Rico shall cease, and from and after such date, all such merchandise and articles shall be entered at the several ports of entry free of duty; and in no event shall any duties be collected after the first day of March, nineteen hundred and two, on merchandise and articles going into Porto Rico from the United States or coming into the United States from Porto Rico."

And by another act of Congress of March 2, 1917, it was enacted:

"Section 38. That all laws or parts of laws applicable to Porto Rico not in conflict with any of the provisions of this

Act, including the laws relating to tariffs, customs, and duties on importations into Porto Rico prescribed by the Act of Congress entitled: 'An Act temporarily to provide revenues and a civil government for Porto Rico, and for other purposes,' approved April twelfth, nineteen hundred, are hereby continued in effect, and all laws and parts of laws inconsistent with the provisions of this Act are hereby repealed."

8. That the complainants have been threatened by the agents of the defendants with the seizure of their property and confiscation thereof to apply the proceedings of their sale to the payment of the illegal excise tax imposed upon the wares, goods and merchandises the property of the complainants, brought from the United States into Porto Rico as aforesaid; and under fear of said threat the complainants have paid the said excise duty upon a certain car, to wit, a Ford car imported from the United States on the [fol. 12] 18th of June, 1924, making known their protest against such excise duty as illegal and in open violation of the laws of the United States. And complainant alleges that by the General Tax Laws of Porto Rico the complainants are taxed and pay upon the same property an annual tax of two per cent ad valorem.

9. And complainants allege that they verily believe that the defendant personally or by his agents will immediately proceed to seize and confiscate all the properties of the complainants consisting in goods, wares and merchandises brought from the United States into Porto Rico to be sold in this island exactly in the same conditions in which they were manufactured in the state of their origin; and by doing so will cause permanent and irreparable injury to the complainants totally wrecking their business and depriving the complainants of their lawful property without due process of law.

Complainants allege that said tax is illegal, unlawful, oppressive and unconstitutional for the following reasons:

1. Because it constitutes double taxation inasmuch as in accordance with the General Tax Laws or Political Code of Porto Rico the same property at the same time and under the same conditions has been taxed with a previous tax ad

valorem, and with a previous tax on complainant's occupation; and with a previous sale tax.

2. Because it is an open violation of the laws of the United States that provide that in no event shall any duties of the kind complained of in this bill of complaint be imposed upon articles brought from the United States into Porto Rico.

3. Because the proceedings to make effective said tax are inquisitorial in their nature and really provide for the confiscation of the property of these complainants without due process of law.

4. Because the Act of the Legislative Assembly of Porto Rico provided for payment of taxes under protest is not applicable to excise duties, by the very nature of this tax; and because it would be impossible to make payments under [fol. 13] protest for every automobile or part of automobiles sold and then file a suit in the court of law for recovery of the tax paid.

And your complainants allege that they have no remedy at law to right the wrong of which they now complain.

Wherefore, inasmuch as the complainant is without adequate remedy at law or except in a court of equity, for the wrongs and grievances herein complained of, said complainant prays that the defendant herein, his agents and all persons under his authority, be perpetually enjoined and restrained from collecting or attempting to collect from complainant, under pretext of enforcing the Act of July 28, 1923, as amended, any tax of the articles mentioned in paragraph VI of the complaint herein, whether in the original packages or package or after delivery by the carrier in the original packages or otherwise, and imported from the continental United States and from embargoing, attaching, withholding or in any manner whatsoever interfering with said articles under the excuse or pretext that said defendant is enforcing said statute, and from in any manner enforcing or attempting to enforce against complainant herein, the provisions of said act as amended and from interfering with the property and business of complainant by embargoes or otherwise for the attempted collection of any tax provided for by said act and under the pretext that

said attempted collection is justified by the provisions of such act and from prosecuting complainant or prosecuting or arresting officers or employees of complainant for removing goods in the original package from the possession of the steamship company or express company or post-office, or for having in their possession goods, whether in the original package or otherwise, upon which said alleged tax has not been paid, or from removing or otherwise disposing of any such goods on which no tax has been paid, or for failure to produce upon demand of any internal revenue official a true and authentic invoice covering such goods in the original package, and from detaining and examining any package, original or otherwise, containing or supposed to contain articles taxable or alleged by defendant to be taxable under said act, and from holding or otherwise interfering with the same under the pretext of enforcing said act; and that pending the final determination of this cause, the defendant, and all persons under his authority, be enjoined pendente lite, from enforcing or attempting to enforce against the complainant any of the provisions of said statute above mentioned and from collecting or attempting to collect from complainant the tax on any of the said articles, and from embargoing, attaching or in any manner whatsoever interfering with the complainant's property or business under such pretext, and from prosecuting complainant or complainant's officer or employees under such pretext and from doing any of the acts mentioned herein above in this paragraph; and that defendant be further enjoined to immediately release and return to complainant all goods and merchandise of complainant seized or embargoed by defendant by reason of the failure or refusal of complainant to pay the said tax and complainant further prays that a subpoena issue, directed to the said defendant, commanding him to appear and true answer make to each and every of the matters and things hereinbefore set forth, but not under oath, an oath being hereby expressly waived. And complainant further prays for such other and further relief as to the court may seem just and proper under the circumstances and allegations of the complainant.

San Juan, Porto Rico, August 10, 1925.

Chas. Coll Cuetu, Solicitor for Complainant.

Duly sworn to by Thomas H. Smallwood. Jurat omitted in printing.

[fol. 15] IN UNITED STATES DISTRICT COURT

JOURNAL ENTRY—August 14, 1925

This case comes on to be heard upon the bill and answer thereto. Come the plaintiffs by Cay, Coll y Cuchi and files a petition to the court praying that they be allowed to file an amended bill of complaint. The motion is argued by said counsel and J. A. Lopez Acosta in behalf of the Treasurer of Porto Rico. The amended bill is allowed to be filed and the answer of the defendant to the original bill of complaint is allowed to stand as an answer to the amended bill. The court hears testimony in behalf of the respective parties and takes the case under advisement. Fifteen days' time is allowed to the parties to file briefs.

IN UNITED STATES DISTRICT COURT

MOTION TO DISMISS—Filed April 25, 1925

To the Hon. Arthur F. Odlin, United States District Judge:

Now come the Attorney General of Porto Rico and undersigned counsel, in behalf of Juan G. Gallardo, as Treasurer of Porto Rico, and respectfully allege:

1. That this court has no jurisdiction to hear and de-
[fol. 16] termine this injunction suit, because the amount therein involved does not exceed \$3,000.

2. That the complaint herein filed does not state facts sufficient to constitute a good cause of action in equity:

(a) Because the plaintiff in this case has an adequate, sufficient and speedy remedy at law by payment under protest, under Act No. 9, approved June 23, 1924.

(b) Because this injunction is filed against the defendant, Juan G. Galardo, in his official capacity as Treasurer

of Porto Rico, and according to the laws of Porto Rico, an injunction has not been authorized against said officer of the Government, nor against the People of Porto Rico, which he represents.

(c) Because it does not appear from the facts alleged in the complaint that there is an intentional discrimination adopted as a practice by the defendant to injure the property of the plaintiff, a simple allegation of the unconstitutionality of the law being insufficient.

Wherefore, your defendant prays the court to dismiss the bill of complaint filed herein, with costs.

San Juan, Porto Rico, April 18, 1925.

H. P. Coats, Attorney General of Porto Rico. R. H. Todd, Jr., of Counsel. J. A. Lopez Acosta, of Counsel.

Copy received this eighteenth day of April, 1925.

Cay. Coll Cuchi, Attorney for Complainant.

[fol. 17] IN UNITED STATES DISTRICT COURT

OPINION AND ORDER GRANTING INJUNCTION—JUNE 2, 1925

OWEN, J.:

The brevity of the opinion in this case must not be construed as evincing either in appreciation by this court of the very great importance of the case or as indicating a lack of thorough consideration and study. The questions involved have been argued with great skill by the eminent counsel representing the litigants, and the court has examined every decision cited in the elaborate briefs which have been filed.

It is proper that the first point to be discussed is the effect to be given by this court to a very important decision cited by counsel on each side, which decision was rendered by the Supreme Court of Porto Rico on March 11, 1925, in the case of the Benitez Sugar Company against Ramon Aboy, Jr., who was formerly Treasurer of Porto Rico. This

decision was written by Mr. Justice Wolf and concurred in by all the other members of the court. It is my opinion that the conditions surrounding the litigation in the present case are quite different from the conditions which surrounded the litigation in the Benítez Sugar Company last mentioned. Upon the point in connection with the payment of taxes under protest, the decision by Judge Wolf refers to an act of the Porto Rican Legislature, number 17, enacted in 1920. My opinion is clear that this act passed in 1920 did not provide an adequate and complete remedy at law for a tax payer who claimed that the Treasurer was seeking to enforce payment of taxes which were illegal, unconstitutional, null and void, by making payment under [fol 18] protest. That this view is correct seems to be borne out by the fact that this act of 1920 was subsequently repealed by the Porto Rican Legislature by an act which was approved June 23, 1924, being number 9 and is entitled as follows: "An Act providing for the payment of taxes under protest; establishing a procedure to authorize the collection and return thereof; to create a special fund; to repeal Act No. 17 of May 13, 1920, and for other purposes." This act of June 23, 1924, has been examined with great care. It specifically provides that a taxpayer believing that the tax imposed against him is illegal shall have the right to pay the same under protest and bring a suit in any competent court, within thirty days thereafter, against the Treasurer of Porto Rico, asking for the return of the amount protested. The money so paid shall be covered into a special fund to be known as "Taxes paid under protest—Trust Fund." Part of Section 4 provides that if a decision be rendered by the court favorable to the tax payer, the Treasurer of Porto Rico shall proceed to return to the tax payer the amount directed in the decision. This means that if the court shall find that the tax is illegal, the court shall have power to allow all the costs to the taxpayer, and the court may, as it should, allow reasonable attorney's fees to the counsel for the tax payer.

An examination of the numerous decisions cited by counsel in this present case convinces me that this recent act of 1924 does provide a plain, adequate and complete remedy at law for the buyer of a single automobile upon

which a tax is imposed; but I am clearly convinced that where a concern is engaged in the constant sale of automobiles, all of which are brought into Porto Rico from the United States, and where during one week a sale of one automobile may be made, and during the following week a sale of two automobiles may be made, and during the following week a sale of three automobiles may be made, resulting in a large and important business, amounting to something like \$200,000 in the course of a year, the taxes upon which would reach a total of \$20,000, more or [fol. 19] less, as alleged in this bill and not denied by the defendant, it would be a very gross hardship that the utilization of this act of 1924, by making constant payments under protest and bringing constant suits, would unquestionably result in a multiplicity of suits, which is a very important head of equity jurisdiction. It therefore follows that the first point raised by counsel for the defendant is entirely without merit and scarcely needs discussion. This point denies the jurisdiction of this court because the amount involved does not exceed \$3,000. Likewise as to the second point relied upon by counsel for the defendant, that this new act of 1924 provides an adequate, complete and plain remedy at law, which operates to defeat the power of an equity court to intervene by an injunction. It seems to be beyond question that this point has already been shown to be without force by what has been stated above. Coming to the third point of the brief filed by counsel for the defendant, it is claimed that this proceeding should be dismissed because of misjoinder. It is claimed that there has been united in one proceeding an action of equity and an action at law. This is based upon one clause of the prayer of the bill to the effect that this court direct the return to the complainant corporation of a small sum of money paid by the complainant corporation under protest previous to the filing of this bill.

I am of the opinion that this point is well taken. It seems to me plain that where a taxpayer claims that the tax is illegal, sees fit to avail himself of the provisions of this recent act of 1924, and makes payment under protest, he should be estopped to ask a court of equity to grant him re-

lief as to that particular item. However, it will be observed that on page 12 of the brief filed by counsel for the complainant, it is stated that they stand ready to strike out that part of the prayer asking for the return of that small item which was paid under protest; therefore, the bill will be deemed as filed with the prayer eliminating that request.

The fourth point relied upon by counsel for the defendant is that no injunction proceeding can be brought against the defendant in his official capacity against the laws of Porto [fol. 20] Rico. This point is entirely without merit. The Supreme Court of the United States has decided over and over again that if a tax is unconstitutional, and if there does not exist a plain, adequate and complete remedy at law, and if the amount involved does exceed \$3,000, a Federal court has full power to entertain an application for an injunction against the proper taxing officer of the State whose legislature has imposed such unconstitutional tax. In a case of this nature no diversity of citizenship is required. Of course, the act of Congress specifically provides that where such a suit is brought in a Federal court existing in any one of the forty-eight States of the Union, three District Judges must sit and the burden of the responsibility of the decision does not rest upon one single District Judge. The remote and non-contiguous geographical location of Porto Rico is such, however, that the Circuit Court of Appeals of the First Circuit decided several years ago that this provision of Congress applied only to Federal courts within the limits of the forty-eight states of the Union, and that it was proper for the Federal District Judge in the Island of Porto Rico to entertain a suit of this nature. It is unnecessary to state that it would be much more gratifying to the writer of this opinion if he could have had the assistance in this important matter of two other District Judges, but inasmuch as the Circuit Court of Appeals for the First Circuit has held that it is the duty of the District Judge in Porto Rico to hear and determine a suit of this nature sitting by himself, there is nothing for the judge presiding over this court to do but to hear the case, consider it and decide it alone, as best he can.

Coming now to the question of the tax itself, counsel for the defendant impliedly concedes, in accordance with the de-

cision of the Supreme Court of Porto Rico, first above cited, that the law of 1921 violated the Constitution of the United States, and also violated the Organic Act of 1917, known as the Jones bill. The law of 1921 provided a tax of 10 per cent upon all automobiles produced, manufactured, introduced or brought into Porto Rico. The law of 1923 [fol. 21] slightly changed the language of the law of 1921 and imposed an ad valorem tax of 10 per cent on all automobiles produced, manufactured, sold or used in Porto Rico. It is claimed by counsel for the Treasurer of Porto Rico that this change of language makes valid that which was previously invalid. I am obliged to hold otherwise and a very brief illustration, coupled with the language of the Supreme Court of the United States in the case of *Galveston against Texas*, reported in the 210 U. S. 227, confirms my view. Let me illustrate. It will, of course, be conceded that the Legislature of Porto Rico can have no greater power than the Legislature of Michigan, or the Legislature of the State of Florida. The powers of the Legislature of Porto Rico are limited by the Act of Congress, passed in 1917, known as the Jones bill above referred to. It is a fact of common knowledge that the State of Michigan produces many automobiles and produces no oranges. It is a matter of common knowledge that the State of Florida produces no automobiles and produces many oranges. An immense number of boxes of Florida oranges go annually to the State of Michigan; and an immense number of automobiles manufactured in the State of Michigan go annually to the State of Florida. We will assume that the Legislature of Michigan should impose a tax of thirty cents on each box of oranges produced, manufactured, sold or used in the State of Michigan, exactly in accordance with the language in the act of 1923 passed here in Porto Rico; we will likewise assume that the State of Florida should pass an act imposing a tax of 10 per cent ad valorem upon each automobile produced, sold, manufactured or used in Florida. How could it be said that this would not be directly violative of the Constitution of the United States, as found in article one, section nine, sub-division five, and also in section ten, sub-division two, cited by Judge Wolf, in his opinion referred to above, which provision says that no tax or duty shall be laid on articles

exported from any State. Furthermore, no State shall, without the consent of the Congress, lay any imposts or duties on imports or exports except what may be absolutely necessary for executing its inspection laws.

[fol. 22] In view of what has been stated above is no proper order for this court to make except to grant the injunction as prayed for by the complainants. At the same time, it is the duty of this court to protect the Treasurer of Porto Rico from possible loss in the event that this decision shall be erroneous.

It is, therefore, ordered that an injunction issue as prayed for by the complainants upon the giving by them of a bond, payable to the Treasurer of Porto Rico, and his successors in office, in the sum of \$50,000.

To this order and opinion counsel for the Treasurer of Porto Rico excepts.

Done and ordered in open court at San Juan, Porto Rico, this second day of June, 1925.

Arthur F. Odlin, Judge.

IN UNITED STATES DISTRICT COURT

PRELIMINARY INJUNCTION—June 3, 1925

THE UNITED STATES OF AMERICA,

District of Porto Rico, ss:

The President of the United States to Juan G. Gallardo,
Greeting:

Whereas, Smallwood Brothers, a corporation of Porto Rico, has filed on the chancery side of the District Court of the United States for the District of Porto Rico a bill against Juan G. Gallardo, and has obtained an allowance for an injunction, as prayed for in said bill. Now, therefore, we having regard to the matters in said bill contained, do hereby command and strictly enjoin you, the said Juan G. Gallardo, from collecting or attempting to collect from complainant under pretext of enforcing the Act of July 28, 1923, as amended, any tax of the articles mentioned in paragraph VI of the complaint herein, whether in the

original package or packages or after delivery by the carrier in the original package or otherwise, and imported from the continental United States and from embargoing, [fol. 23] attaching, withholding, or in any manner whatsoever interfering with said articles under the excuse or pretext that you are enforcing said statute, and from in any manner enforcing or attempting to enforce against complainant herein the provisions of said act as amended and from interfering with the property and business of complainant by embargoes or otherwise for the attempted collection of any tax provided for by said act and under the pretext that said attempted collection is justified by the provisions of such act and from prosecuting complainant or prosecuting or arresting officers or employees of complainant for removing goods in the original package from the possession of the steamship company or express company or post-office, or for having in their possession goods, whether in the original package or otherwise, upon which said alleged tax has not been paid, or from removing or otherwise disposing of any such goods on which no tax has been paid, or for failure to produce upon demand of any internal revenue official a true and authentic invoice covering such goods in the original package, and from detaining and examining any package, original or otherwise, containing or supposed to contain articles taxable or alleged by you to be taxable under said act, and from holding or otherwise interfering with the same under the pretext of enforcing said act; and that pending the final determination of this cause, you and all persons under your authority, are enjoined from enforcing or attempting to enforce against the complainant any of the provisions of the said statute above mentioned and from collecting or attempting to collect from complainant the tax on any of the said articles, and from embargoing, attaching or in any manner whatsoever interfering with the complainant's property or business under such pretext, and from prosecuting complainant or complainant's officers or employees under such pretext and from doing any of the acts mentioned herein above, which commands and injunctions you are respectively required to observe and obey, until our said District Court shall make further order in the premises.

Hereof fail not, under penalty of the law thence ensuing.
[fols. 24 & 25] Done in open court this third day of June,
1925.

Arthur F. Odlin, Judge.

Bond on injunction for \$50,000, approved and filed July
18, 1925, omitted in printing.

[fol. 26] IN UNITED STATES DISTRICT COURT

ANSWER—Filed June 9, 1925

To the Honorable District Judge of the United States for
Porto Rico:

Now comes the Attorney General of Porto Rico, and undersigned counsel in behalf of the Treasurer of Porto Rico, and in answer to the complaint herein filed, respectfully allege:

1. Defendant admits paragraph 1 of the complaint.

2. For want of information, defendant denies each and every allegation of paragraph 2 of the complaint, and especially that the goods, wares and merchandises sold by complainant, if any, are sold in the same condition in which they are received from the sellers in the United States; and defendant furthermore denies that complainant is engaged in the business of importation of cars; otherwise alleging that complainant's business is, as far as the knowledge received on information by defendant, the sale of automobiles after they are in the market and have become part of the mass of property of complainant, which sale is made not to specific persons but to anybody who happens to buy an automobile of the make or makes in stock in the hands of complainant. Defendant furthermore denies, for want of information, that the amount of money therein alleged as invested by said complainant in its business, or that the amount of taxes alleged in the complaint is the one that must be paid by said complainant. And defendant furthermore denies that the taxes involved in this suit and

under collection, and for which alleged distraint was threatened, reach the amount of \$3,000.

3. Defendant admits paragraph 3 of the complaint as to the approval, by the Legislative Assembly of Porto Rico, of the excise tax law of 1923, and the existence in said law of section 20, subdivision 18, taxing motor vehicles; but denies that the tax imposed and assessed by said law is illegal, oppressive or wrongful.

4. Defendant admits paragraph 4 of the complaint, as to the sections therein quoted, as forming part of Act No. 68 of 1923, as amended by Act No. 1 of August 27, 1923, and Act 6 of June 23 of 1924; and defendant furthermore [fol. 27] alleges that the collection of said taxes, as assessed in accordance with the aforesaid law, is regulated by the rules and regulations prescribed and issued by the Treasurer of Porto Rico, as provided in section 33 quoted, sections 41, 43 and 87, which read as follows:

"Section 41. That the Treasurer of Porto Rico is hereby authorized to remit the tax accruing on any merchandise under the Internal Revenue Laws of Porto Rico, upon presentation to him of satisfactory evidence of its destruction by fire or by force majeure and without any fraud, collusion or negligence on the part of the owner, consignee or other interested party, before such merchandise has been removed from the premises on which manufactured, place of business of the dealer or owner of the merchandise prior to its sale, or from any other place when the owner has not taken charge of same, and before such taxes have been paid, and he may, in his discretion, permit the destruction of any taxable merchandise when it has become unfit for sale or consumption without fraud, collusion or negligence of any kind on the part of the owner, consignee or other interested party before the removal of said merchandise from the premises specified in this section and before such taxes have been paid thereon; and in case of such destruction, he may exempt said merchandise from the payment of the internal revenue taxes accruing thereon."

"Section 43. That articles subject to taxation in accordance with the provisions of this act, shall be exempt from taxation when exported from Porto Rico, after such regulations have been complied with, entries made and such

bond furnished as the Treasurer of Porto Rico may prescribe."

"Section 87. The Treasurer of Porto Rico shall issue such regulations as may be necessary to enforce the provisions of this act not in conflict herewith; but until new regulations shall have been issued by the Treasurer, the rules and regulations at present in force shall continue in [fol. 28] full force and effect, provided they are not in conflict herewith."

Defendant furthermore alleges that the collection of the excise taxes, according to the rules and regulations now in force and according to the practice and procedure followed by the offices of the Department of Finance, are not collected every time an article assessed under the law is sold, but that said taxes are collected monthly, bi monthly, and sometimes for a longer period, when the amount due to the Treasurer of Porto Rico is sufficient to justify a payment under protest, in case that the taxpayers believes that the tax collected is illegal or excessive.

5. Defendant admits paragraph 5 of the complaint, as to the approval of Act No. 9 of June 23, 1924, providing the payment of taxes under protest and authorizing a procedure for the return thereof. Defendant furthermore alleges that said law, as is now in force, provides a sufficient, adequate and complete remedy at law to protect the rights of any taxpayer in the collection of taxes by the government, under any of the tax laws of the Island of Porto Rico.

6. Defendant denies each and every allegation of paragraph 6 of the complaint, and especially that the tax imposed by the excise tax law of Porto Rico is oppressive, or that if complainant was to pay under protest the taxes provided by said law, it would be compelled to file a multiplicity of suits and legal proceedings; otherwise alleging that the excise tax law of Porto Rico, as approved in the year of 1923 and amended in the same year by Act No. 1 and by Act No. 6 in the year of 1924, provides that the collection of the tax will be made according to the Rules and Regulations prescribed and issued by the Treasurer of Porto Rico; that according to the said Rules and Regulations, the payment of the taxes imposed by said law is requested, in some cases bi monthly, in some monthly, and in some after a

longer period of time, when the amount due to the government is large enough to be paid in one installment and the recovery of which would require only one legal proceeding [fol. 29] before a court of competent jurisdiction.

7. Defendant admits paragraph 7 of the complaint, as to the existence of the laws therein quoted; but defendant alleges that said laws are not applicable to the case at bar; because in the present case the tax imposed is not a tax on importation but a tax on the sale of the article, assessed when the property is in the hands of the taxpayer and forming part of its stock in trade, and when the article has become part of the mass of property of the seller; and that said tax is never collected until the property has been sold and has been transferred from the possession of the seller to that of the buyer, and when said article has ceased to be subject to the importation laws and is in the market for the object of commerce. Defendant furthermore alleges that when a tax has been levied, according to sub-division (a) of Section 36 of Act No. 1, approved on August 23, 1923, said tax is assessed by a special agreement between the taxpayer and the government, voluntarily made, and said taxes are paid by the taxpayer of its own volition and without any proceeding of distraint, attachment or in any other way affecting the property of the taxpayer.

8. In answering paragraph 8 of the complaint, defendant alleges that he admits that a collection was made from complainant, for the amount of \$42.84, paid by said complainant on a Ford car which had been sold by it at the time that the collection of taxes was made; but defendant denies that the collection of said tax was illegal or in any way confiscatory; and defendant furthermore denies that any property of complainant was seized, attached or confiscated for the payment of said tax; otherwise alleging that the practice followed by the Department of Finance with complainant, as well as with other taxpayers engaged in the same business in Porto Rico, is to collect the said taxes periodically and after the number of cars sold was sufficient to make a lump sum large enough to be paid in one installment, and without causing the plaintiff or the taxpayer an irreparable injury, or the filing of a multiplicity of suits to [fol. 30] recover the taxes paid. Defendant furthermore denies that any property tax is collected from complainant on automobiles sold, and to which the excise tax refers.

9. Defendant denies paragraph 9 of the complaint, and especially that the defendant, either personally or by its agents, will seize, confiscate or attach any property of complainant for the collection of said taxes; and furthermore, defendant denies that any injuries will be caused to complainant, or that it will be deprived of its property without due process of law. Defendant further denies that these taxes constitute a double taxation, or that the said law is contrary to the laws of the United States, or to the laws of Porto Rico, or that it constitutes an oppressive or inquisitorial confiscation of property; otherwise alleging that said law is not contrary to the laws of the United States or the Constitution;

(a) Because the United States Constitution is not in force in Porto Rico, *ex proprio vigore*;

(b) Because the United States Interstate Commerce Act is not applicable to Porto Rico;

(c) Because there is not prohibition in the Organic Act of Porto Rico, known as the Jones Act, forbidding the assessing and levying of a tax on the stock in trade in the hands of merchants used in their business, after the articles have become part of the mass of property of the taxpayer.

(d) Because the enforcement of the excise tax law of Porto Rico, as provided in the above said sections, is made according to the rules and regulations issued and prescribed by the Treasurer of Porto Rico; and according to the said rules and regulations, and the practice followed by defendant, the excise tax is not collected immediately after the sale of each article, but periodically, figured on the *ad valorem* price of the sale of the article during said specific time. And defendant furthermore denies that complainant has no remedy at law; otherwise alleging that it has an adequate, sufficient and complete remedy at law by payment under protest.

Special Defense

As a special defense, defendant alleges:

That the tax imposed by Act No. 68 of 1923, as amended by Act No. 1 of 1923 and Act No. 6 of 1924 is an excise

tax upon the sale of the article, and not a property tax or a tax on importation; that as an excise tax on sales, no collection can be made, or duty to pay arises, until the article is disposed of and has been transferred to another person, the property of same ceasing to be in the complainant; that the said excise tax, as imposed according to the above said law, is not an important tax, because it is not assessed until the article has left the hands of the carrier and until it has become part of the stock in trade of the merchant and is subject to commerce, and the same is not levied until the said article has been sold and the possession resides in the buyer, and the ownership of same has been transferred from the seller; that said tax is imposed, assessed and levied without distinction on articles produced or manufactured, or not manufactured or produced in the Island of Porto Rico, but sold herein; and that 48.5 per cent of the taxes received from said excise tax law are derived from articles produced or manufactured in Porto Rico; that said excise tax is never assessed, levied and collected until the articles subject to it has acquired a situs in the Island of Porto Rico, and is subject to its tax laws.

Defendant furthermore alleges that in all of these articles (automobiles) sold by complainant, the said complainant has collected from the buyer the amount of the tax that should be paid and is retaining the same, refusing to pay the said amount to the defendant or its agents; and defendant furthermore alleges that said taxes are really paid by the consumer or purchaser of the article, and not by complainant.

Defendant also alleges that the United States Constitution is not in force in Porto Rico *ex proprio vigore*; that complainant is not the really interested party in the suit; [fol. 32] and that no irreparable injury exists or has been caused to complainant in the enforcement of the Excise Tax Law of Porto Rico.

Wherefore, your defendant prays that the bill of injunction herein be dismissed, with costs, the court granting any other remedy that it may deem meet and proper.

San Juan, Porto Rico, June 9, 1925.

George C. Butte, Attorney General of Porto Rico.
Miguel A. Munoz, of Counsel. J. A. Lopez
Acosta, of Counsel.

Copy received this — day of June, 1925, ———, Attorney for Complainant.

I, J. A. Lopez Acosta, hereby certify:

That I am one of the attorneys for the defendant, in the above entitled case; that a copy of this answer has been notified to attorney Cayetano Coll Cuchi, leaving a true and correct copy of same at his office at San Juan at 2.30 p. m. on this date, said Cayetano Coll Cuchi being absent from San Juan and the attorney in charge of his office having refused to sign the notification.

San Juan, Porto Rico, June 9, 1925.

J. A. Lopez Acosta, Attorney for Defendant.

Subscribed and sworn to before me by J. A. Lopez Acosta, on this ninth day of June of 1925. Antonio Aguayo, Clerk Dist. Court U. S. for P. R., by L. G. Donohue, Chief Deputy. (Seal.)

[fol. 33] IN UNITED STATES DISTRICT COURT

NOTICE OF FILING OF STATEMENT OF FACTS—Filed October 10, 1925.

To the Attorney General of Porto Rico and to Honorable J. A. Lopez Acosta, Counsel for the Defendant, San Juan, P. R.:

Please take notice that the statement of facts in the above entitled case, copy of which is annexed hereto, will be filed today on the 10th of October, 1925.

San Juan, Porto Rico, October 10, 1925.

Cay. Coll Cuchi, Solicitor for Complainants.

Copy of the foregoing statement of facts duly acknowledged and the same being a true and correct statement of the evidence therein contained and presented in this case, the same is hereby approved.

San Juan, P. R., October 10, 1925.

George C. Butte, J. A. Lopez Acosta, Counsel for Defendant.

IN UNITED STATES DISTRICT COURT

Statement of Facts—Filed October 10, 1925

Be it remembered that this case came on for hearing before the Honorable Ira K. Wells, Judge of the District Court of the United States for Porto Rico, sitting at San Juan, Porto Rico, on the fourteenth day of August, in the year one thousand nine hundred and twenty-five, plaintiff being represented by attorney Cayetano Coll Cuchi, Esquire, and the defendant, Juan G. Gallardo, Treasurer of Porto Rico, by the Attorney General of Porto Rico, by Assistant Attorney General J. A. Lopez Acosta.

Whereupon GEORGE A. STUCKERT, being then called as a witness for the plaintiff, being duly sworn, testified as follows: that his name is George A. Stuckert, residing at Puerta de Tierra, San Juan, Porto Rico; that his business [fol. 34] consists in buying and selling automobiles, accessories, supplies and parts; that they do business under the name of Smallwood Brothers; that what he means by automobile business is their principal business consisting in the Ford car, which they buy from the Ford Motor Company, together with parts, in Detroit and in New York; that the cars and parts of automobiles which they buy are from Detroit, State of Michigan, United States; that said cars and accessories come by railroad to New York and thence by steamship to Porto Rico; that they come under invoices and bills of lading, which invoices and bills of lading proceed from the Ford Motor Company to Smallwood Brothers; that the bills of lading are from the steamship company doing traffic from New York to Porto Rico; that they patronize all the big companies, the Baltimore Steamship Company, New York and Porto Rico Line, and Bull Line; that these wares are packed in a box when coming to Porto Rico; that after they are landed they stay there until taken away by Smallwood Brothers; that when the wares are taken away by the complainants, they carry them to their place of business situated at Stop 6, Puerta de Tierra.

Whereupon, the following proceedings took place:

Mr. Lopez Acosta: To gain time I would like that Mr. Coll refer to the kind of taxes. I refuse to have the record filled with immaterial matter. He must make examination on the basis of the matter in hand.

Mr. Coll: We will come to that.

The Court: It will be admitted and considered for what it is worth. Overruled.

Mr. Lopez Acosta: An exception.

And then the witness continued testifying that they are not always placed on sale right away, but some of the boxes are kept on hand to get them from the steamship docks, that is, they store them; that from the time they get that merchandise from Michigan until they are sold, they do not manufacture or do anything more to them before selling, except taking the box off; that he has been over his books lately, up to June 30th of this year; that the in-[fol. 35] vestment in their business, cash money, is approximately three hundred thousand dollars; that he means that the capital, actual cash to carry on the business, amounts to that sum; and that said sum is subject to the risk of business; that if they fail in their business they would lose more than three hundred thousand dollars; that to a great extent he is responsible for the bookkeeping of the firm; that without referring to the books he cannot state how much taxes were assessed by the Government of Porto Rico upon cars or accessories or parts of cars brought by the complainants from the United States during the period of time comprised from June 1, 1924, to June 1, 1925;

Whereupon, the following proceedings took place:

Q. 1. Please explain to the judge how they do it.

Mr. Lopez Acosta: I object to the use of that book unless it is offered in evidence.

The Court: He has a right to use it to refresh his memory.

Mr. Lopez Acosta: I would like to have the witness state so, because if your Honor should not admit it later on it has already been testified on.

Mr. Coll: I have to identify the book and then I will offer it in evidence.

The Court: I think it should be offered in evidence first, and the other side allowed to examine it. Objection sustained.

Mr. Lopez Acosta: We have no objection to admitting the book in evidence but wish to state that we reserve the right to contest the probatory force of this document until all the amendments, entries, etc., are proven to have been made correctly.

The Court: It may be admitted and considered for what it is worth.

Mr. Coll: I offer as part of my evidence a book marked in Spanish "Book of Stocks and Sales of Assessable Articles", as coming from the Treasury Department and with folios from 2801, it being written up to folio 2813, and from half of folio 2810 to folio 2813, written up only on one side of the page, the left side.

[fol. 36] Mr. Lopez Acosta: We object to the admission of this evidence in connection with the pages that do not cover the business of 1924 and 1925.

Mr. Coll: I cannot divide the document. I have to put it in in toto.

The Court: It will be admitted in evidence insofar as it relates to the time in question in this suit.

[Marked "Exhibit A for Complainant".]

Q. 2. Now, Mr. Stucker, please go ahead and explain to the judge how the officers of the Government use this book?

A. My statement is based on information received from my own employees.

Mr. Lopez Acosta: I object, your Honor, to anything that the witness knows from others.

The Court: Objection sustained. That is clearly hearsay.

Q. 3. Who writes in that book?

A. Several people write in it; our employee and the Government employee.

Q. 4. Who is your employee?

A. His name is James Waldron.

Q. 5. Under what supervision does he work?

A. As bookkeeper.

Q. 6. Who is the custodian of this document in your office?

A. He is.

Q. 7. Is he in Porto Rico?

A. He is.

Q. 8. Now let us come back to the question; besides this ten per cent (10%) tax, what other taxes do you pay?

A. We pay a municipal "patente".

Q. 9. I mean to the Insular Government.

A. An insular "patente" tax. It is in Spanish, but as I understand it it is for the privilege of doing business.

Q. 10. Have you got that here with you?

A. I have a receipt here.

Q. 11. Now, what is that that I hand you, if you know?

A. A receipt from April 1, 1925, to June 30, 1925, of one hundred twenty-five dollars (\$125), paid to the Department of Hacienda Insular Government.

[fol. 37] Q. 12. For what?

A. For doing business with motor vehicles, accessories, tires, and tubes.

Mr. Coll: I offer in evidence a receipt which is a document from the Government of Porto Rico paid by Smallwood Brothers for an occupation tax under the Excise Law for the quarter comprised between April 1, 1925, and June 30, 1925.

[Marked "Exhibit B for Plaintiff."]

Mr. Lopez Acosta: According to the laws of evidence I have the right to examine the witness first.

The Court: You may examine the witness as to this document.

Mr. Lopez Acosta: Mr. Stucker, is this a license for the sale of motor vehicles?

Mr. Coll: I object. That is a matter of law.

The Court: It shows for itself.

Mr. Lopez Acosta: Then I object to the admission of this document on the ground that it is immaterial, impertinent and irrelevant, and because the subject of the document is not in issue as to the tax on tires, accessories, nor casings and other parts.

The Court: This is an equitable proceeding in which there is no jury and the document will be admitted and considered for what it is worth.

Mr. Lopez Acosta: An exception, please.

And then the witness continued testifying that he has got some notes that would allow him to make the statement for the calendar year 1924; that what he has in his hands is a memorandum book made by himself from the general ledger and the books of the corporation that are under his control; that said memorandum was to refresh his memory in this case; that after refreshing his memory he can state that the taxes assessed for the year 1924 were thirty-eight thousand dollars, approximately; that the taxes assessed for the six or seven months of 1925 would be less than the total for the previous year; that the taxes assessed would be greater for the proportionate number of months, because their business and imports have increased; that they pay [fol. 38] great many taxes in their business; that it seems as if they were always paying taxes; that what he means by "excise taxes" is this eleven per cent tax of which they are speaking about; that the Government told the corporation to pay this eleven per cent tax; that this tax is levied on the landed cost of the goods; that the amount of thirty-eight thousand dollars and the other amounts to be paid to the Government this year are for the excise tax; that he means to say that that is the tax of ten per cent that they collect *ad valorem* on autos and parts; that last year the corporation was assessed in the neighborhood of thirty-eight thousand dollars, and that it will be about the same amount for this year.

[Witness picks up a book and says:] That this is the book in which the tax is assessed; that said book is furnished to them by the Treasurer of Porto Rico; that the said book is made by the Government of Porto Rico and given to Smallwood Brothers by the Government; that this book is for the purpose of assessing these excise taxes; that he is speaking about these ten per cent tax; that the name of the complainants' employee who writes upon this book is James Waldron, book keeper and custodian of this document in complainants' office; that besides this ten per

cent tax the complainants pay an insular "patente" tax which the witness understands to be for the privilege of doing business; that the paper shown to him is a receipt from April the first, 1925, to June 30, 1925, of one hundred twenty-five dollars paid to the Treasurer for doing business with motor vehicles, accessories, tires and tubes; that the complainants also pay an insular property tax on all of their movable property, including the automobiles on which they pay the ten per cent; that this is a percentage, a tax also of two per cent on the same automobiles on which the complainants pay a ten per cent excise tax; that the witness knows of his own knowledge that this tax of two per cent for which the witness is showing a receipt from the Government, is a percentage tax paid by the complainants on the same cars, trucks, automobiles, parts and accessories on [fol. 39] which the complainants pay the ten per cent excise tax; that the receipt is marked "27th day of January 1925", which is the day when it was paid, and that it is marked in a corner "1924 25".

Upon cross-examination by Mr. Lopez Acosta, the witness testifies that he is a member of Smallwood Brothers, acquainted with the business and transactions of this firm in the buying and selling of automobiles, but not with all details; that they buy their automobiles from New York, from the Ford Motor Company principally, to whom they send an order for an automobile, upon which said order the car is sent to the island; that when the car arrives the bank sends the complainants a draft which is then paid to the man who presents the draft; that after the automobile is paid for, they bring it up from the steamship pier and placed in their place of business; that they keep the automobiles in their place of business as their own property when they belong to them, or as somebody else's property when it has been so ordered.

Whereupon the following proceedings took place:

X Q. 13. Then tell us what automobiles that book shows you have received during the year from July 1, 1924, to June 30, 1925.

A. I am not familiar enough with the book.

X Q. 14. But you knew enough about the book to identify it for the complainant, did you not?

Mr. Coll: I object.

The Court: He——

Witness: Your Honor, the question in my mind is what these dates mean.

The Court: You are supposed to have put the dates there, or have charge of it.

Witness: Our bookkeeper put these dates in.

The Court: You have testified that it is more or less under your supervision and that it contains entries of all automobiles and accessories received by your company during the time mentioned, and you ought to know what the book contains.

[fol. 40] Mr. Coll: I think the witness is confused. We have in court the man who wrote the book.

The Court: He may answer the question if he can. Objection overruled.

And then the witness continued testifying that the tax is assessed on one side of the page of the book, and when a payment is made the entry is made on the other side of the page; that the witness never made any direct entries of any consequence in the book, relying on the bookkeeper to make all entries; that this book contains general information regarding the shipment of automobiles and the assessment of taxes; that the witness does not know what date the automobiles come into the possession of the complainants; that the witness does not know the amount of automobiles that the complainants had in stock in August, 1924, although he could give that information by looking up the complainants' books, which are not at hand; that the complainants pay freight for those cars to the same man who collects the price of the cars, because the freight is included in the amount of the draft; that the witness cannot say from memory how many of the automobiles brought by the complainants in the year 1924-1925 were the property of the complainants and what were brought upon somebody else's order; that the automobiles are sold in different ways; a few are sold for cash and the majority upon conditional sales contract whereby the title to the car remains with the firm of Smallwood Brothers until the last payment is made; that the man who buys the car has the possession of it; that the number of cars in stock by the com-

plainants varies every day, somewhere between thirty and one hundred cars, on the entire island, and that usually it is a fact that all cars in stock belong to the complainants; that the witness cannot say how much excise tax was paid in the month of July, 1924, but that he can say for the whole year the complainants paid thirty-eight thousand dollars, which knowledge he has from the memorandum made from the books; that he does not mean paid, but assessed; that during the calendar year 1924 the complainants paid fifteen thousand [fol. 41] and five hundred ninety-six dollars eighty-five cents; that the complainants paid a number of different taxes which are approximately two per cent property tax, as shown from the receipt in evidence, covering the merchandise in stock as of a certain date in January, which the witness thinks was the 15th of January; that according to the receipt the only property that was assessed at the date of the same, was the property that the complainants had in stock on the 15th of January, as upon inventory of that date.

Whereupon the following proceeding took place:

Q. 15. Now, Mr. Stucker, is it or is it not true that this license is the license to keep that store going? [Referring to the license introduced in evidence and marked "Exhibit R for Plaintiff."]

Mr. Coll: I object. That shows for itself.

The Court: Objection sustained. It shows for itself. His idea of what it is for might be right or wrong.

Mr. Coll: I am trying to show that a double tax is payable. If it is a double tax your Honor will decide.

The Court: I think the receipt will show for itself. The idea of this man or of the man who collects it might be absolutely wrong. The receipt must show what it is for.

Mr. Lopez Acosta: I take exception to the court's ruling on the ground that the court cannot decide when there is double taxation until it is proven that the taxes are similar, under the same law, and that those taxes are similar.

The Court: In answer to the objection the court would say that this witness can have no knowledge except to express his own conclusion as to what the tax is for. The receipt itself is the best evidence of the purpose of the tax.

X Q. 16. What is this tax for?

Mr. Coll: I object. That is the same question.

The Court: Objection sustained. Any evidence he could give would simply be his conclusion.

[fol. 42] X Q. 17. You have a store in Puerta de Tierra, have you not?

A. Yes, sir.

X Q. 18. What do you sell in that store?

A. Principally automobiles and parts.

X Q. 19. What else?

A. Tractors.

X Q. 20. What else?

A. Plows and implements, accessories, and tires, and labor. I think that covers everything.

X Q. 21. You sell oils do you not?

A. Yes; that is considered as an accessory.

X Q. 22. Do you sell gasoline there?

A. We do not sell gasoline at the curb retail. We do however put gasoline in repair jobs. In that way it may be said that we sell it.

X Q. 23. Do you sell cotton waste?

A. Yes.

X Q. 24. Do you pay any taxes for the right to sell these articles?

Mr. Coll: I object to that.

The Court: The witness may be asked what taxes he pays.

Mr. Coll: But not what he pays for, because he pays what the law says.

Mr. Lopez Acosta: It would be very nice if we could not ask the witness what taxes he pays and what he pays them for. We have the right to know if the amount of taxes that he refers to and all the licenses are taxes that he pays or does not pay.

Mr. Coll: The opinion of this witness does not bear upon this question at all.

Mr. Lopez Acosta: It bears upon the veracity of this witness.

The Court: I think he can ask the question, as touching upon his veracity.

Mr. Coll: Then I withdraw my objection if they are trying to contradict the witness. They may ask him questions in geography even.

A. We pay a number of different taxes, and we presume that we do pay a tax for the sale of those items, included in the many taxes that we do pay.

[fol. 43] X Q. 25. What are those taxes, Mr. Stucker?

A. May I refer to this book?

X Q. 26. Can you testify from memory?

A. Without referring to the books I can tell you some of them; yes.

X Q. 27. Then tell us some of them.

A. We pay approximately two per cent (2%) property tax. We pay insular taxes.

X Q. 28. What is that tax?

A. That is the tax the receipt for which is in your hands.

X Q. 29. Do you know of your own knowledge what this tax is?

A. No; I know it because I was told so.

X Q. 30. Mr. Stucker, you testified that you were assessed a tax of two point naught nine per cent (2.09%) for personal property, did you not?

A. I think I said we were assessed a property tax of approximately two percent (2%) covering merchandise in stock.

X Q. 31. About when was that tax assessed?

A. It was assessed as of a certain date in January.

X Q. 32. Do you remember the date?

A. I think it was the fifteenth of January. The receipts should show it.

X Q. 33. Are these the receipts you refer to?

A. Yes.

X Q. 34. Mr. Stucker, when this property tax was assessed on the 15th of January, 1925, did you have in stock at that time the cars you got from New York, or received from New York, in March, 1925, that is, after February, 1925, until July, 1925?

A. How could we have them in stock before they are received?

X Q. 35. Then, Mr. Stucker, how can you testify that this property tax refers to the same automobiles referred to in this complaint?

A. Because as I understand it this complaint covers a longer period of time than between February and July.

X Q. 36. Then did you have on the 15th of January, 1925, when this property tax was assessed, in your stock room, the same cars you received in 1924 from the States, or had you sold most of them?

A. We had sold most of them. To answer your question correctly I would have to check the identification of the car.

X Q. 37. Then according to this receipt the only property that was assessed was the property you had in stock on the [fol. 44] 15th of January, 1925?

Mr. Coll: I object to that your Honor because the question tends to confuse witness's mind. Witness stated that the cars were not the same cars he had four months before. He has not said he had the same amount of property.

The Court: The witness may answer if he knows upon what this assessment was made.

Mr. Lopez Acosta: This point is very important. The attorney for the plaintiff is trying to show double taxation.

The Court: Objection overruled.

A. The assessment was made on the inventory as of January 15th, 1925.

X Q. 38. When do you make the inventory?

A. Usually on January 1, 1925.

X Q. 39. Do you have in your inventory the cars you received in July of 1924?

A. Do you mean the same identical cars?

X Q. 40. Yes.

A. I cannot answer that. I don't know.

The Court: I suppose you could have the identical cars in stock that you received in July, that had not been sold in the meantime.

Witness: Correct; yes, sir.

Mr. Lopez Acosta: I move the court at this time to order stricken from the record the testimony of this witness in all that part of the testimony referring to the knowledge that the witness had from the books, because the books are the best evidence. Also that part of the testimony of the witness where he testified about knowledge received from other people, as in connection with the insular license for 1925, because the best evidence is the testimony of the persons themselves.

Mr. Coll: The motion is too late, your Honor. It cannot be made unless the objection was made at the proper time. In the second place the motion is not definite and specific enough to allow your Honor to make a ruling on it. You cannot rule to strike out parts of the record that are [fol. 45] not specifically described and indicated. The motion must be specific, stating what the testimony is, when it was given, etc. Otherwise I would not know what you would be striking out. In the third place the witness testified as to books under his control.

Mr. Lopez Acosta: The rule of law is this: You can make an objection when a question is made, or you can petition for a strike-out when the answer is made, or you can make a motion for striking out at the end of the testimony. However, your Honor, I objected to the testimony, but I was prevented on the ground that the witness could not testify from those books. Therefore I am in time, and in law entitled to have this motion made at the end of the cross-examination of the witness.

The Court: The knowledge of this witness as to the books of this firm and their contents is very meagre and uncertain, and only such part of his evidence as refers to matters within his personal knowledge will be considered. This is a matter in equity, and the court will not consider the matters testified to by this witness of which he has not personal knowledge.

Then the witness JAMES A. WALDRON, being called and having been duly sworn, testified that his name is James A. Waldron, living in Puerta de Tierra, Porto Rico, a book-keeper employed by Smallwood Brothers; showing him complainants' Exhibit A, the witness testifies that it is a book given to Smallwood Brothers by the Government of Porto Rico to assess the taxes; that in the firm of Smallwood Brothers the witness is the one who keeps this book; that the object of this book is to place all taxes assessed on importations; that the witness means by that taxes assessed on automobiles, parts and accessories; that the book is in the witness' handwriting; that when he makes an entry in the books is under the supervision of the tax inspectors; that the tax inspector comes to the witness with a steamship manifest and makes the witness to get out his fac-

turas (bills of sales) and bills of lading; that the witness produces them and the inspector assesses the tax, the witness enters it in the books and the inspector initialed them; that the initials in the books are the initials of the agents [fol. 46] of the government; that the agents of the government give the witness from the manifest the data to be set down in the books; and that when they do that most of the times the merchandise is at the dock, on the pier; that it happens in many cases that the manifest comes ahead of the merchandise; and sometimes without the merchandise having arrived in Porto Rico; that after this process is completed, they proceed to collect the money for the tax; that looking at the book he may say that the last time that the agents of the People of Porto Rico assessed and collected the tax of ten percent in four items, the same amounted to one thousand five hundred seventy five dollars fourteen cents, as shown in page number 2810 and lines number seven to ten of the book; that the goods were one case electric horn buttons, twelve (12) cases automobile tires and steel rims, twenty one (21) cases auto cars and trucks, and sixteen (16) more cases of auto cars and trucks; that the book itself shows the condition of those merchandises so far as package is concerned when the taxes were assessed and collected; the said merchandises being in their cases, in the same cases in which they were when they came from the United States as shown in the said page 2810, and same column; that after the government assesses those taxes in the way that the book shows, with the merchandises within the package in the store room, in the pier or in transit, then the complainants make out a check for the amount and it is paid to the agents of the government after making an entry in the book shown to the witness (Exhibit D for the Complainants), and an amount of Internal Revenue stamps equal to the tax is cancelled; that to the knowledge of the witness the government agents assessed the ten percent tax actually upon the goods, cars or trucks in the stores of the complainants, but the taxes were always assessed upon the shipping manifest or the invoices, at a time when the merchandise might be at the dock or in transit.

Upon cross examination by Mr. Lopez Acosta, the witness testified that he had been in the employ of Smallwood Brothers for seven years; that the writing in the books used

[fol. 47] in evidence is his writing, and that the witness was in charge of the books, that the witness is sure that all the entries in the books are correct; that on page 2810, under the heading "Observations and Signature of the Internal Revenue Agents," the date of May 9, 1924, means the date that the government agents gave the witness as the date of the arrival of the steamship; that he places the date that the agents give him; but he does not know whether it is the date in which the merchandise arrives in Porto Rico; that he does not know whether on that date the boat came in or not, but that said date means when the merchandise arrives, according to the agents' statement; that he knows when the merchandise arrives in the warehouse of the complainants, but does not know when it arrives in Porto Rico.

Whereupon the following proceedings took place:

Mr. Lopez Acosta: I ask your Honor to strike out the testimony of this witness as he does not make that of his own knowledge.

Mr. Coll: He enters it in the way the government agent says, and that when the merchandise is assessed it is not in the possession of Smallwood Brothers. He has written that under the agent's directions.

Mr. Lopez Acosta: This man has testified that the tax is not collected when it is in the warehouse, but on the way. We are going to show that this tax is collected when the merchandise is in the possession of Smallwood Brothers.

The Court: He has testified that sometimes the tax is collected before the merchandise arrives, and sometimes when they have arrived. But he has never testified that he knows when they arrived. He testifies that the agent of the government would bring details to him and tell him that the steamship would arrive or had arrived on a certain date, and he would make the entry and they assessed the tax.

Mr. Lopez Acosta: I am going to show that that is not true.

The Court: Objection sustained.

[fol. 48] That the witness does not know if the goods taxed were on the ship which arrived on that date or not; that the date now showed to him is the 15th of July, on which date a government agent came to the witness and asked him to

produce the invoice in the steamship "Clare," voyage number eighty-two, bill of lading number ninety-eight; that date is that which the government agent gave the witness and it means the date when the government agent came and asked the invoices to be produced; that the witness was not able to say where was the merchandise when he made this entry; because he does not know; that sometimes the invoice comes in one boat and the merchandise in another boat, sometimes not for a month; that the date shown him is December 16th, and it means that an item was paid on that date, which the witness knows because he made out the check for the amount of six hundred dollars and thirty two cents, paid February 4th, 1925; that there is no place in the books to show when the goods were received, although it shows that the first entry is made on the 20th of August, and it was paid on the 4th of February.

Whereupon the following proceedings took place:

Mr. Coll: I object to this line of examination because the question is not when it was paid, but when it was assessed. What makes it illegal is the assessment and not the payment.

Mr. Lopez Acosta: Your Honor, it is the other way.

Mr. Coll: I would like to see the authorities.

Mr. Lopez Acosta: We are going to try to prove that the taxes were collected after the cars were sold, and in possession of the buyers.

Mr. Coll: It becomes illegal from the moment that the government makes the assessment.

The Court: I think the date of the assessment is the date to go by.

Mr. Lopez Acosta: The government can assess any number of taxes against any person and that person cannot do anything until we attempt to collect those taxes. We can assess millions of dollars on a taxpayer.

[fol. 49] The Court: You may show both dates.

Mr. Lopez Acosta: This is a sales tax.

Mr. Coll: That should be considered later.

The Court: The witness may answer.

X Q. 1. How long between the time of entering in the book and the time of payment?

A. It is right there in the book.

X Q. 2. Mr. Waldron, you testified that at the time these taxes were collected by the government, that the merchandise was at the dock, did you not?

Mr. Coll: He has testified that sometimes it is.

X Q. 3. Tell the court at what times, on what dates, the merchandise was on the dock and when it was not?

A. I would have to get the invoices.

X Q. 4. Did you know you were coming here today?

A. Yes, sir.

X Q. 5. Did you know what you would have to say?

Mr. Coll: He didn't know what he was going to be cross-examined about. He knew what I was going to bring out.

The Court: I think the question is perfectly proper and if you want the witness to get these invoices he will get them at the noon hour.

Mr. Lopez Acosta: I move the court to strike out this witness's testimony, as the best evidence is the books that he refers to.

The Court: His testimony will be considered for what it is worth; I think he has shown a very intimate knowledge of the book. His testimony will be considered for what it is worth.

W. P. SMALLWOOD, being then called as a witness for the plaintiff, having been duly sworn, testified as follows:

Direct examination by Mr. Coll:

Q. 1. State your name, please.

A. W. P. Smallwood.

Q. 2. You are one of the plaintiffs in this case, are you not?

A. I understand so; yes, sir.

Q. 3. Now, Mr. Smallwood, from the knowledge that you [fol. 50] have of your business, can you explain to the judge of this court, so that his Honor may appreciate the facts, how the ten per cent (10%) excise tax that you pay to the government or that the government assesses against your automobiles is arrived at by the government officers?

What is the process whereby they arrive at a given sum that you have to pay?

A. I understand they take the cost in the States, and they add the costs of landing it here in Porto Rico.

Q. 4. Now let's take an example. You mean the factory cost?

A. Yes, sir.

Q. 5. What is say one hundred dollars? Then they add what?

A. The cost of boxing.

Q. 6. Say ten dollars. Then what?

A. The cost from the factory to the seaboard.

Q. 7. Say five dollars. What else?

A. Then from the seaboard to the dock.

Q. 8. Say five dollars. Anything else?

A. And from the dock to our place of business.

Q. 9. Say another dollar. Do they add insurance?

A. Yes, sir.

Q. 10. And ocean transportation?

A. Yes, sir.

Q. 11. When they come to the total of these items, what do they do?

A. They take ten per cent of the total which represents profits.

Q. 12. They take ten per cent of supposed profits that you would make and they add that?

A. Yes, sir.

Q. 13. Then what do they do?

A. They take ten per cent as tax.

Q. 14. Then make you pay ten per cent on your profits?

A. Yes, sir; according to the figures.

Cross-examination by Mr. Lopez Acosta:

X Q. 15. Mr. Smallwood, where do you buy these cars?

Mr. Coll: I object to that, as that is not in the line of my direct testimony.

Mr. Lopez Acosta: I withdraw the question.

[fol. 51] X Q. 16. What is your profit in the sale of the car, considering the price of the automobile and all expenses until you have it in Porto Rico?

A. You say, how much is the profit?

Q. 17. Yes, sir.

A. I don't think anybody can answer that question.

X Q. 18. How much do you pay for the car in the States?

A. I would have to know what car you mean.

X Q. 19. The Ford car.

A. It depends on what kind of wheels, class of car, etc.

Mr. Coll: This is not material, your Honor. The proper way is to establish a hypothetical figure of how much the car costs, how much are the expenses and how much would be the ten percent profits. But the government has no right to ask this question.

The Court: The plaintiff in this suit commenced the suit, and the witness is a witness in his own behalf. The witness has a right to answer this question. Proceed.

X Q. 20. Mr. Smallwood, how much do you make, what is the profit in the sale of an ordinary, common Ford car, without extra wheel, without extra top, without any extras?

A. If I made the statement I would be guessing.

X Q. 21. Well, guess.

A. I really don't know.

X Q. 22. How long have you been in the business? Are you not a member of this firm?

A. I don't know anything about the details.

X Q. 23. You stated the amounts, did you not?

A. That was hypothetically speaking.

Mr. Lopez Acosta: Then I move, your Honor, to have the testimony of this witness stricken out as it was only hypothetical, and it is wholly irrelevant, immaterial and not pertinent in this case.

Mr. Coll: If it please the court, the testimony brought out was very material and relevant, since its purpose was to bring out, as it did, quite clearly, though hypothetically, the method employed by the government in assessing the ten percent tax on automobiles, trucks, accessories, etc., [fol. 52] showing how a fictitious profit of ten percent was added to the other items of cost, before assessing the excise tax of ten percent. As to the profit which might be made on a car, who can make such a statement. The profits are calculated on the total volume of business at the end of the year. It is impossible to say what is the profit

on any car. He does not know. He is in business to make a profit, but he might take a loss on one transaction and a profit on another, and one must be taken with the other in order to arrive at an average. Anyone who understands something of bookkeeping will know how this is. Furthermore, I must point out that my line of questioning is absolutely away from the cross-examination that counsel is now following.

Mr. Lopez Acosta: As far as knowledge of bookkeeping is concerned, I would like to say that I was a bookkeeper before I was a lawyer. I will show to your Honor that the other side does not know what profit was made. If they do not prove that there was a profit, how can they allege that this tax was assessed on the profit?

The Court: I understand from their testimony that they claim in fixing the amount of the taxes that you add ten percent and tax them on that.

Mr. Coll: And that is the law, your Honor.

Mr. Lopez Acosta: Therefore, it is immaterial, and I move to have it stricken out.

The Court: It will be considered for what it is worth.

Mr. Lopez Acosta: I would like to file a motion to dismiss on these grounds.

Mr. Coll: You cannot do that unless you waive your evidence. That means a general demurrer to the evidence, and you cannot do that unless you waive your right to the evidence.

The Court: We will take that up at two o'clock this afternoon. Court will be at recess until then.

[The court then took a recess until 2.00 P. M.]

Mr. Lopez Acosta: This motion, if your Honor please, is for want of jurisdiction. Now comes the defendant at the [fol. 53] close of the plaintiff's case and respectfully moves the court to dismiss the petition of injunction herein filed because from the evidence offered and admitted it does not appear affirmatively and distinctly that the amount of taxes, the object of the injunction and involved in this suit, reaches the amount of three thousand dollars (\$3,000) exclusive of interest and costs.

In the first place I wish to argue my right to file this motion. The Judicial Code that regulates practice in the

Federal Courts, in speaking of the time to ask for a dismissal for want of jurisdiction, in section 37, 36 Statutes at Large 81087, and in section 5, 18 Statutes at Large 472, reads as follows:

"Sec. 37. If in any suit commenced in the district court, or removed from a State court to a district court, it shall appear to the satisfaction of the said district court, at any time after such suit has been brought or removed thereto, that such suit does not really and substantially involve a dispute or controversy properly within the jurisdiction of said district court, or that the parties to said suit have been improperly or collusively made or joined, either as plaintiffs or defendants, for the purpose of creating a case cognizable or removable under this chapter, the said district court shall proceed no further therein, but shall dismiss the suit or remand it to the court from which it was removed, as justice may require, and shall make such order as to costs as shall be just."

And Foster on Federal Practice commenting on this section of the Judicial Code, vol. 2, page 1917, says:

"Dismissal for Want of Jurisdiction.—The Judicial Code provides: 'If, in any suit commenced in a District Court or removed from a State court to a District Court of the United States, it shall appear to the satisfaction of the said District Court, at any time after such suit has been brought or removed thereto, that such suit does not really or substantially involve a dispute or controversy [fol. 54] properly within the jurisdiction of said District Court, or that the parties to said suit have been improperly or collusively made or joined, either as plaintiffs or defendants, for the purpose of creating a case cognizable or removable under this chapter, the said District Court shall proceed no further therein, but shall dismiss the suit or remand it to the court from which it was removed, as Justice may require, and shall make such order as to costs as shall be just.' The court should do this of its own motion, as soon as it discovers its want of jurisdiction or the improper or collusive joinder. The Supreme Court has said that such an act is salutary, and that it is the duty of the courts to exercise their power under it in all proper cases. Neither party has the right, however, without plead-

ing a denial within the time allowed for that purpose, to introduce evidence to contradict averments of the jurisdictional facts; but if the defect appears upon the plaintiff's pleading or the evidence, the objection may be taken at any time even after a trial upon the merits."

Now, if your Honor please, if at the close of the plaintiff's case it does not appear from the evidence that the amount involved in this suit is the amount of three thousand dollars, exclusive of interest and costs, this court has no jurisdiction, and now is the proper time for the defendant to move the court to dismiss the bill; and even if I do not do it, your Honor has, imposed by the law, the power to dismiss the bill. If your Honor please, it is a well known fact that the Federal Court is a court of limited jurisdiction. No cases can come into this court except when there is a case of citizenship, or if the amount in consideration is three thousand dollars (\$3,000) or more. I would like to cite to your Honor the case of *Norton v. Larnea*, decided January 5th, 1925, a very recent case. The opinion delivered by Justice Sutherland appears in advance sheet of United States Supreme Court opinions numbers six (6) and seven (7), page 187, where it says:

[fol. 55] "It is quite true that the jurisdiction of a Federal Court must affirmatively and distinctly appear, and cannot be helped by presumptions or by argumentative inferences drawn from the pleadings. If it does not thus appear by the allegations of the bill of complaint, the trial court, upon having its attention called to the defect, or upon discovering it, must dismiss the case, unless the jurisdictional facts be supplied by amendment."

In the case of the First National Bank of Columbus, Ohio, versus the Louisiana Highway Commission et al., decided March 17th, 1924, advance sheets of the United States Supreme Court Opinions, volume twelve (12), page 381, it was decided by Judge Butler that: "It must appear on the face of the complaint, or otherwise from the proofs, that the matter in controversy exceeds, exclusive of interests and costs or value of three thousand dollars." And, if your Honor please, in the case of *Sovereign Camp, Woodmen of the World*, versus *O'Neill*, decided November 17,

1924, United States Supreme Court Opinions, volumes three (3) and four (4), page 52, where the different claims in taxes were accumulated to give the court jurisdiction, Judge Sanford gives this opinion: "It is the settled general rule, frequently applied by this court in tax cases, that in a suit based upon diversity of citizenship brought against defendants to enjoin against the collection of claims against the plaintiff which are separate and distinct—although depending for their validity upon a common origin—the test of jurisdiction is the amount of each separate claim, and not their aggregate amount."

If your Honor please, if you look into the record in this case you will find there were only three (3) witnesses on the stand. Mr. Waldron only testified as to a book. Your Honor will be able to give that testimony probatory force, but no attempt was made to prove the jurisdictional amount by this witness. The only witness was Mr. Smallwood and he was only used to prove the method of imposing the tax. [fol. 56] The only evidence, if your Honor please, is the declaration of Mr. Stucker. It is alleged in the complaint that jurisdictional amount in this case amounts to more than three thousand dollars. We have denied the fact. Therefore, it remains for them to prove it. Mr. Stucker testified that his knowledge and information was from the books. We asked that this testimony be stricken out as the books were the best evidence, and according to the rules of practice no secondary evidence is permitted unless it is proven that the first evidence is out of the court's jurisdiction, or cannot be obtained, and nothing of this has been proved in this case. The only testimony given by Mr. Stucker was that during the year they were assessed thirty-eight thousand dollars. According to the statement of the witness this testimony was based on the books. Therefore, if the court is going to grant our motion to strike out the testimony, it must go out of the record. But suppose, if your Honor please, that this must stand on the record, is it sufficient to show that the taxes to which this complainant refers amount to more than three thousand dollars? The plaintiff cannot go into court to prove any claims for taxes beyond what is included in the complaint.

The amount of the taxes that the government tried to collect, and for which the injunction was issued, have not

been proved and there is no evidence sufficient in this case to show that the amount in controversy exceeds three thousand dollars so that this court may have jurisdiction.

Mr. Coll: I am bound to say that the government is taking a very risky step. They have modified their attitude a little bit from this morning. This morning they moved to dismiss on the ground that our evidence did not sustain our ground in this case. Now they want to move that the case be dismissed on the ground that we have not proved the jurisdictional amount. This is very important to bear in mind, unless at the same time they waive their right to introduce any more evidence. I am not going to bother your Honor to read the decisions, but I am going to read [fol. 57] the digest of the decisions as contained in the Encyclopedia.

Your Honor will find in 21 Corpus Juris the following paragraph under the title of Equity: "Dismissing a bill at the close of plaintiff's case, before defendant presents or rests his case, is not correct practice in equity, in the absence of express provisions to the contrary. The case being set down for hearing on the bill, answer and proof, if defendant is willing to risk his case upon plaintiff's proof or rather the failure of plaintiff to prove his case, he should submit the case to the court for final hearing, and if he is not so satisfied, he should present what proof he desires or may be able to present."

There are three notes in that paragraph and citations of cases, and when your Honor looks at them your Honor will find that he is admitting the final disposition of the case without possibility of reopening the case and getting the defendants here. Why that is very simple. If your Honor will look at Equity Rulings, you will find that Judge Dillon decided that squarely, and no attempt has been made to upset Judge Dillon's decision.

We argued it before the previous incumbent in this court and he decided it did, and the bill of complaint definitely and formally alleged that the amount involved exceeded the sum of twenty thousand dollars. If we have not won that point the government has won the case, and they should be in a position to go into the final hearing. I do not like to take advantage of these technicalities, and I tell your

Honor that it seems impossible that counsel for the government might for a single moment pretend to impose upon your Honor a motion of this kind when we have here this book. I don't care anything about Mr. Stucker, or Mr. Waldron, or Mr. Smallwood. We have here the government book——

The Court: I do not care to hear from you there on that at this time, Mr. Coll. I will decide the whole case at once. Thus the motion will be overruled.

Mr. Lopez Acosta: An exception.

Mr. Coll: I have no more witnesses, your Honor.

[fol. 58] [Plaintiff rests.]

Mr. Lopez Acosta: We offer in evidence the testimony of Mr. Amy as to how these taxes are assessed.

Upon cross examination the witness testifies that he cannot say how much profit the complainants make upon the sale of a single car.

And then the complainants rested their case.

Cay. Coll Cuchi, Attorney for Complainants.

IN UNITED STATES DISTRICT COURT

JUDGE'S CERTIFICATE TO STATEMENT OF FACTS

The complainant appellants, T. H. Smallwood et als., tender and present the foregoing as its statement of evidence in this case and prays that the same be approved by the court and made a part of the record and the same is accordingly done this tenth day of October, 1925.

The foregoing contains all the evidence, excepting exhibits, in the case in narrative form, and where the testimony herein is set forth in the form of question and answer, it is so set forth that the evidence might be clearly understood.

San Juan, Porto Rico, October 10, 1925.

Ira K. Wells, District Judge.

IN UNITED STATES DISTRICT COURT

OPINION AND JUDGMENT—September 18, 1925

Honorable Cay, Coll y Cuchi, Attorney for Complainants.
The Attorney General, Attorney for the Defendants.

WELLS, J.:

In this case the facts are substantially the same as in equity case No. 1286 of Insular Motor Corporation, Complainant, v. Juan G. Gallardo, Treasurer of Porto Rico, Defendant. This case was submitted at the same time as the Insular Motor Corporation case and the law involved is the same and was argued and presented in the same briefs. [fol. 59] The decision in this case will follow that of the Insular Motor Corporation above referred to for the reasons therein stated.

The temporary injunction hereinbefore issued is therefore dissolved and the complaint dismissed with costs.

Dated at San Juan, Porto Rico, this eighteenth day of September, 1925.

Ira K. Wells, Judge.

IN UNITED STATES DISTRICT COURT

PETITION FOR APPEAL AND FOR A SUPERSEDEAS—Filed September 22, 1925

To the Hon. Ira K. Wells, Judge of the District Court of the United States for the District of Porto Rico:

The petition of the complainants respectfully represents:

That petitioners are aggrieved by the judgment and decree herein rendered on September 18, 1925, in favor of the defendant and against the said complainants, ordering the dissolution of a preliminary injunction in this case, and that petitioners, for the reasons specified in the assignment of errors filed herewith, desire to appeal and do hereby appeal from said decree, and desire that said appeal, returnable to the Circuit Court of Appeals for the First Circuit, shall operate as a supersedeas and may suspend during

the pendency of said appeal the effect of said order and decree of dissolution.

Wherefore, the petitioners pray that the said appeal may be allowed, and that, upon their giving bond in an amount to be fixed by this court, the said appeal may operate as a supersedeas and may suspend during the pendency of said appeal the effect of said decree of dissolution; that said appeal be made returnable to the United Circuit Court of Appeals for the First Circuit, according to law, and that a transcript of the record, proceedings and papers and exhibits upon which said decree was rendered, duly authenticated, be sent to the said Circuit Court of Appeals.

And petitioners pray for all general and equitable relief.
[fol. 60] San Juan, Porto Rico, September 21, 1925.

Cay. Coll Cuchi, Solicitor for Complainants.

IN UNITED STATES DISTRICT COURT

ASSIGNMENTS OF ERROR—Filed September 22, 1925

Now, on the twenty-first day of September, 1925, came the said complainants, by Cay. Coll Cuchi, their solicitor, and says that the decree in said cause is erroneous and against the just rights of the said complainants, for the following reasons:

1. Because the evidence in the case showed that the taxes in question were taxes upon importations into Porto Rico from the United States.

2. Because the evidence showed that the taxes in question were imposed upon goods and merchandises in the course of interstate commerce.

3. Because the evidence showed that the taxes in question were imposed upon property before the said property reached into the hands and possession of the complainants.

4. Because the Act No. 68 of the Legislature of Porto Rico of 1923, as amended by Act No. 1, of August 27, 1923, and by Act No. 6, of June 23, 1924, is null and void because it constitutes double taxation inasmuch as in accordance with the General Tax Law or Political Code of Porto Rico

the said property at the same time and under the same conditions, has been taxed with a previous tax ad valorem, and with a previous tax upon the occupation or business of the complainants.

5. Because the said laws are in open violation and contradiction of the laws of the Congress of the United States, that provide that in no event shall any duties of the kind complained of in the bill of complaint herein, be imposed upon articles brought from the United States into Porto Rico.

6. Because the proceedings to make said tax effective are [fols. 61 & 62] in the nature of a confiscation of the property of these complainants, without due process of law.

San Juan, Porto Rico, September 21, 1925.

Cay Coll Cuchi, Solicitor for Complainants.

IN UNITED STATES DISTRICT COURT

ORDER ALLOWING APPEAL AND SUPERSEDEAS—September 24,
1925

Considering the foregoing petition this day presented it is ordered that an appeal be allowed to the petitioners and complainants in this suit, from the decree of September 18, 1925, rendered against said complainant in the above entitled and numbered cause, and that said appeal shall be returnable to the United States Circuit Court of Appeals for the First Circuit, and that, upon the execution of a bond in the penalty of twenty-five thousand dollars said appeal shall operate as a supersedeas of said decree and shall suspend, until the final decree or appeal herein, the effect of the order dissolving the preliminary injunction herein, and that a transcript of the record, including all the exhibits offered in evidence by either party, be filed in the United States Circuit Court of Appeals, according to law, as prayed for.

San Juan, Porto Rico, September 24, 1925.

Ira K. Wells, District Judge.

Bond on Appeal for \$25,000 approved and filed September 24, 1925, omitted in printing.

[fol. 63] Citation, in usual form, showing service on Juan G. Gallardo, omitted in printing.

[fol. 64] IN UNITED STATES DISTRICT COURT

PRECIPE FOR TRANSCRIPT OF RECORD—Filed September 30, 1925

To the Clerk:

You are requested to take a transcript of the record to be filed in the United States Circuit Court of Appeals for the First Circuit, pursuant to an appeal allowed in the above entitled case and to include in said transcript of record the following and no other papers or exhibits, to wit:

[fols. 65 & 66] The Amended Bill of Complaint.

The Motion to Dismiss.

The Order and Opinion Denying Motion to Dismiss.

The Preliminary Injunction.

The Bond on Preliminary Injunction.

The Answer.

The Statement of the Case.

The Petition for Appeal and Supersedeas.

The Findings, Opinion and Decree.

The Order Allowing Appeal and Supersedeas.

The Citation.

The Bond on Appeal.

The Assignment of Errors.

The Precipe.

Respectfully, Cay, Coll Cuchi, Attorney for Com-
plainants-Appellants.

Clerk's certificate to foregoing transcript omitted in printing.

[fol. 67] IN UNITED STATES DISTRICT COURT

SUPPLEMENTARY PRÆCIPUE FOR TRANSCRIPT OF RECORD—Filed
March 31, 1926

To Antonio Aguayo, Esq., Clerk of the District Court of
the United States for Porto Rico:

Please include in the transcript of the record in this case and send to the Circuit Court of Appeals for the First Circuit, in addition to the papers, pleadings and proceedings already sent in the præcipe of this case, the following:

Final decree nunc pro tunc, entered by the court on
March 31, 1926.

San Juan, Porto Rico, March 31, 1926.

Coll Y Cuchi & Cruzado Silva, por G. Cruzado Silva.

Copy of the above supplementary præcipe is hereby acknowledged this 31st of March of 1926.

George C. Butte, Solicitor for Defendant.

Attest: A true copy. Antonio Aguayo, Clerk, by Mary
Aguayo, Deputy. (Seal.)

IN UNITED STATES DISTRICT COURT

FINAL DECREE NUNC PRO TUNC—Filed March 31, 1926,
Nunc pro Tunc as of September 18, 1925

On this the thirty-first day of March, A. D. 1926, came the parties to this cause, by their attorneys, and made known to the court that no final decree has been entered in this cause, and that the said cause is now on appeal before the United States Circuit Court of Appeals for the First Circuit. It appearing proper, therefore, that a final decree nunc pro tunc should be entered in this cause as of the eighteenth day of September, 1925, and all parties agreeing to this, it is hereby ordered that the following Final Decree be entered:

[fol. 68] IN THE DISTRICT COURT OF THE UNITED STATES FOR
PORTO RICO

Equity. No. 1285.

T. H. SMALLWOOD, W. F. SMALLWOOD, A. D. SMALLWOOD, E.
A. Smallwood, G. C. Smallwood, George A. Stuckert,
Doing Business under the Firm Name of Smallwood
Brothers, Complainants,

v.

JUAN G. GALLARDO, Treasurer of Porto Rico, Defendant

Bill to Recover an Illegal Tax and for an Injunction

FINAL DECREE—Filed March 31, 1926, *nunc pro tunc* as of
September 18, 1925

This cause came on for final hearing on the fourteenth day of August, A. D. 1925, all parties appearing by counsel, and the evidence being closed, the case was thereupon submitted to the court upon written briefs filed by the parties.

And having considered the evidence, the pleadings and the briefs of counsel, the court finds that the equities in this cause are with the defendant, Juan G. Gallardo, Treasurer of Porto Rico, and that the taxes as demanded of complainants by defendant, and which are complained of in the bill of complaint herein, are valid and legal in every respect.

It is therefore ordered, adjudged and decreed that the temporary injunction hereinbefore issued in this case be hereby dissolved, and that the petition for injunction to restrain the defendant, Juan G. Gallardo, Treasurer of Porto Rico, from assessing and collecting from complainants the taxes provided under Act No. 68 of the second session of the tenth Legislature of Porto Rico, approved July 28, 1923, as amended by Act No. 1, approved August 27, 1923, and Act No. 6, approved June 23, 1924, be and the same is hereby denied, and that the bill of complaint be herewith dismissed.

It is further ordered, adjudged and decreed that the complainants pay all costs herein.

Let this decree be entered *nunc pro tunc* as of the eighteenth day of September, A. D. 1925.

[fols. 69 & 70] Dated at San Juan, Porto Rico, this thirty-first day of March, A. D. 1926.

Ira K. Wells, Judge.

Clerk's certificate to foregoing paper omitted in printing.

[fol. 71] IN UNITED STATES DISTRICT COURT, DISTRICT OF
PORTO RICO

No. 1302. Equity.

ADOLFO VALDES ORDOÑEZ, SALVADOR GARCIA, VICTOR OCHOA,
Pio Perez, Luis E. Cuyar, Sucesion De Jose Ochoa and
Carmen Albornoz De Ochoa, Doing Business under the
Firm Name of J. Ochoa & Hno., Complainants,

v.

JUAN G. GALLARDO, Treasurer of Porto Rico, Defendant

Bill for an Injunction

BILL OF COMPLAINT—Filed August 13, 1925

To the Honorable Ira K. Wells, Judge of the District Court
of the United States for Porto Rico:

Now come the complainants above named, by the undersigned solicitor, and respectfully show:

[fol. 72] 1. That the complainants are all of age and residents of the Island of Porto Rico.

The defendant, Juan G. Gallardo, is an American citizen and the Treasurer of Porto Rico, with residence within this district, duly appointed and qualified, and acting as such Treasurer during all times referred to in this bill of complaint.

2. The complainants do business in Porto Rico under the firm name of J. Ochoa Hermano; and their main and principal business consists in the sale of automobiles and automobile accessories; and each and all of the goods and merchandises sold by the complainants in their regular course of business are manufactured, produced and built in the

United States, principally in the States of Michigan and Connecticut, and brought into Porto Rico under regular invoices and bills of lading showing the state from which they are thus brought within this jurisdiction; said goods, wares and merchandises being sold by the complainants to the public at large in exactly the same conditions in which they are brought into Porto Rico without any process of further manufacture, or improvement or betterment than that of their original condition.

And complainants allege that they are engaged in the importation of auto cars from the United States to be sold in Porto Rico; that the complainants have invested in said business more than one hundred thousand dollars and the continuation and development of said business is based entirely upon the importation of motor cars from the United States as aforesaid; that the complainants have imported during the past twelve months motor cars on which taxes hereinafter mentioned would exceed the sum of twenty thousand dollars; all of which is levied against importations upon goods manufactured in the United States and imported therefrom; that complainants are and will continue to import said goods during this year upon which, unless the relief herein invoked is granted, it will be compelled to pay the said taxes to an amount of not less than twenty five thousand dollars; that the value of motor cars made in the United States to be imported by the complainants this year will amount to not less than two hundred thousand dollars.

3. That the Legislative Assembly of Porto Rico passed an Act, which was duly approved by the Governor, on the twenty-eighth day of July, 1923, entitled "An Act to provide revenues for the People of Porto Rico by levying certain excise and license taxes for the practice of certain professions, industries or business; to regulate the manufacture, use and sale of alcoholic preparations and other articles; to impose certain penalties; to repeal the excise and license tax laws now in force, and for other purposes; which act was subsequently amended by an Act of August 27, 1923, and by another Act of June 23, 1924"; said acts being commonly known as the Excise Tax Law of Porto Rico; and that by virtue of Tax Law an Excise Tax upon

the goods, wares and merchandises, sold by the complainants, which complainants allege is an illegal, oppressive and wrongful tax, for the reasons to be hereinafter alleged, is provided for as follows:

"Section 20. That there shall be levied, collected and paid, for one time only, as an internal revenue tax on each of the following articles: * * *

18. Motor vehicles.—On every motor vehicle, automobile, motor-cycle, aeroplane, hydroplane, dirigible, side-car for motorcycles, motor for automobiles, bicycle, launch, auto-truck, chassis, auto-wagon, auto-tractor, parts and accessories for all of the aforesaid articles, solid or pneumatic tires, inner tubes therefor, excluding tools, screws, tube-valves, spark plugs and light bulbs, piston rings, felt washers, steel ball-bearings, lamp lenses, radiator rubber tube-clamps therefor, vibrators and tire tube patches, produced, manufactured, sold or used in Porto Rico, a tax of ten (10) per cent ad valorem.

Persons, not residents of Porto Rico, using their own automobiles for personal use only, shall be exempt from payment of tax for a period not to exceed sixty days from the date when they began to use said automobile. On the [fol. 74] expiration of that period, or before, if the automobile is destined for other purposes than the above mentioned, the tax shall be paid."

4. Complainants respectfully allege that in said law the following sections have determined the procedure to make such illegal and unlawful tax effective, and prescribing penalties for the refusal to pay said tax:

"Section 33. The Tax hereby prescribed on articles for sale, use, consumption or exhibition in Porto Rico, except as provided in Section 29 of this Act, shall be levied as soon as they are on the market in possession of a dealer or commission merchant or the representative thereof in this island, who shall be responsible for the payment of said taxes upon transferring said articles to another dealer or consumer, or upon acquiring them or having them in his possession, and who shall pay such taxes in one of the two following forms in accordance with such regulations as the Treasurer of Porto Rico may prescribe for the purpose:

(a) Upon acquiring the taxable articles and having them in his possession, by making entries of receipt and delivery in the stock and receipt and delivery book, and by simultaneously paying the tax by cancelling the corresponding stamps on an internal revenue invoice; (b) or as he disposes of the taxable articles. Persons acquiring taxable articles through channels other than the aforesaid dealers or commission merchants or their representatives, shall pay said taxes as soon as they obtain possession of the articles and in accordance with the definition of ad valorem contained in this Act.

"Dealers shall be responsible for the payment of said tax when he acquires taxable articles, if such tax shall not have been paid.

"Section 34. All persons dealing in taxable merchandise, or who have or shall have had such merchandise in store, shall furnish the Treasurer of Porto Rico or his duly authorized representatives, all such information as may be required of them in connection with said merchandise.

"Section 35. From and after the date on which this Act takes effect, every person acquiring any taxable articles for his personal use or consumption, on which the tax specified in this Act has not yet been paid, shall, as soon as coming into possession thereof, file an affidavit, with the Treasurer of Porto Rico, stating the class and quantity of the articles acquired, their value, and any other information that the Treasurer of Porto Rico may by regulations prescribe.

"From and after the date on which this Act takes effect, every person, who by himself or through his agents or representatives, acquires taxable articles for sale or transfer to another merchant or consumer, and on which the taxes specified by this Act have not been paid, shall keep in his commercial establishment, from which it shall not be removed, except by authorization of the Treasurer of Porto Rico, an official book wherein entries shall be made of all taxable articles at the time they are acquired, and the corresponding entry at time of selling or otherwise disposing of them, and further, furnish all other information that the Treasurer of Porto Rico may by regulation

prescribe for the purpose of determining the value and other circumstances in connection with such articles; provided, That upon the taking effect of this Act, the stock on the market shall be classified as follows:

“(a) That on which the tax has already been paid;

“(b) That subject to the payment of taxes on which such taxes have not been paid;

“(c) That which was not subject to the payment of taxes prior to the date on which this Act takes effect; Provided further, that merchandise already acquired under classes (a), (b) and (c), shall not be taxable under this Act, provided, further, that the Treasurer of Porto Rico is hereby empowered to adopt such necessary measures not in conflict herewith, as shall prevent any person from fraudulently evading or attempting to evade, the payment of taxes herein provided for, making merchandise acquired during the time this Act is in effect, appear as if acquired prior to the date on which it takes effect; And, provided, further, that every person who, availing himself of such means shall evade or attempt to evade payment of said taxes, shall be deemed guilty of misdemeanor, and when the court in whose jurisdiction the offense has been committed convicts such persons, he shall be fined in a sum of not less than one hundred (100) dollars, or shall be sentenced to prison for a term of not less than thirty (30) days.

“Section 36. That articles subject to tax, used by agents or commission merchants as samples for the purpose of soliciting business, shall be exempt from the payment of the said tax upon furnishing a bond in such amount and in such form and condition as the Treasurer of Porto Rico may demand, and if for any reason the said articles shall be disposed of for consumption or use in Porto Rico, the excise tax, as prescribed in this Act, shall be paid thereon.

“Section 37. That all taxes provided for in this Act shall be paid by affixing and cancelling internal revenue stamps on such documents and articles, as for such purpose the Treasurer of Porto Rico may prescribe. Such stamps shall be furnished by the Treasurer of Porto Rico, on requisition,

to collectors of internal revenue, in such quantities as may be necessary for local needs; Provided, that for the purpose of identification of certain taxable articles such as perfumery, medicines, arms and others which, in the judgment of the Treasurer of Porto Rico, it may be necessary to identify so as to determine whether or not the taxes required by this Act have been paid, the Treasurer of Porto Rico is hereby authorized, through the promulgation of rules and regulations, to cause to be affixed to the said [fol. 77] articles stamps or other adequate signs which shall be furnished gratis to taxpayers by the Treasurer of Porto Rico; provided, further, that the Treasurer of Porto Rico may affix such stamps on taxable articles required while former excise tax laws have been in force and which articles are in the market when this act takes effect.

"The lack of such stamps or signs on the articles required by regulations, shall constitute prima facie evidence that the tax has not been paid.

"Section 38. That every person who fails to pay the taxes herein prescribed, at such time and in such manner as this Act provides, except as otherwise herein determined, shall be guilty of misdemeanor, and the merchandise on which said tax has not been paid may be attached by the Treasurer of Porto Rico or by his agents and by him sold at public auction to indemnify the People of Porto Rico for the sums defrauded by the violator.

"Section 39. That every person who shall have in his possession or has on any premises under his control, any merchandise subject to tax under the provision of this Act, on which such tax has not been paid, except such as are duly entered in the official book of a licensed manufacturer, or of a dealer, shall be guilty of misdemeanor, and the merchandise may be seized by the Treasurer of Porto Rico or by his agents, and by him sold at public auction to indemnify the People of Porto Rico for the amounts defrauded by the violator, and the license of such person, if a merchant, may be revoked."

5. That the Legislative Assembly of Porto Rico passed a law, duly approved by the Governor, on the 23rd of June, 1924, entitled "An Act providing for the payment of taxes under protest, etc.", as follows:

"Section 1. Whenever a taxpayer believes that he should not pay a tax or part thereof because he understands that [fol. 78] it is illegal, excessive or wrongfull, he shall, however, have the obligation to pay the same in full upon request of the collector of taxes of his district, or of the official in charge of the collection of taxes, and shall ask the said collector or the said official in charge of the collection of taxes, should he desire to make any claim, to endorse the tax receipt specifically stating whether the said protest refers to the whole or to a part of that tax paid under protest, and setting forth the exact amount protested. The said endorsement shall be signed by the taxpayer and by the collector or officer in charge of the collection of taxes.

"Section 2. After payment is made, the collector of taxes or the official in charge of the collection of taxes, shall cover the sum collected into the Treasury of Porto Rico, reporting to the Treasurer the total amount of the tax, as well as the part thereof paid under protest.

"Section 3. The moment that a tax paid under protest is received, the part thereof not protested, if there be any, shall be considered as all other receipts from taxes, the amount of which is to be applied to the obligations of the Insular Government, and in the case of property taxes the part of said tax pertaining to the respective municipalities pursuant to law, shall be paid over to them. The protested part shall be covered into a special fund to be known as 'Taxes paid under protest—Trust Fund.'

"Section 4. A taxpayer who shall have paid under protest the whole or part of any tax shall, within a term of not to exceed thirty days from and after the date of payment, sue the Treasurer of Porto Rico in a court of competent jurisdiction to secure the return of the amount protested. The Treasurer of Porto Rico, through the Attorney General or through the official designated by the latter from his department, shall answer the said suit within the term granted by law for the filing of answers and shall [fol. 79] make therein, in their order, allegations to strike out particulars of the complaint and demurrers.

"When the case is ready for trial the court before which the action is pending shall fix the day for the trial thereof without the necessity of a request from the parties, first serving due notice on them.

"When final decision is rendered, if favorable to the taxpayer, the Treasurer of Porto Rico shall proceed to return to him the amount directed in the decision to be charged against the fund 'Taxes paid under protest—Trust Fund,' referred to in section 3 hereof.

"If the decision be favorable to the People of Porto Rico, the Treasurer shall cover from the fund known as 'Taxes paid under protest—Trust Fund,' into the proper fund such amount of the tax as directed by the court in its decision, turning over to the respective municipalities the proportion established by law in cases of property taxes.

"Section 5. Either party may appeal to a higher court by filing in the court a quo his appeal within ten days after the decision is rendered, as provided by section 4 of this act; provided, that if the taxpayer be the appellant he shall file, together with the petition for appeal and in the court appealed from, a bond in such sum as the court shall fix to answer for such costs, expenses, and damages as the People of Porto Rico might suffer by reason of said action.

"The said appeal shall prosecute pursuant to the provisions of law for appeals in civil cases, and the court of appeals shall hold the hearing with preference over any other matter pending before it.

"Section 6. Any taxpayer filing a suit against the Treasurer of Porto Rico in accordance with the provisions of this Act shall attach to the said suit the receipt for the tax paid under protest, or a certified copy of said receipt.

"Section 7. That the sum of fifteen thousand (15,000) dollars or such part thereof as may be necessary is hereby [fol. 80] appropriated, out of any funds in the Insular Treasury, not otherwise appropriated, for the payment by the Treasurer of Porto Rico of such costs as by judgment of any competent court may be allowed to any taxpayer who shall have brought suit pursuant to this Act.

"Section 8. Act No. 17 of May 13, 1920, as well as all laws or parts of laws in conflict herewith are hereby re-

pealed; provided, that any action, proceeding or right arising from and exercised under the act hereby repealed, shall continue under the protection and provisions thereof until its termination.

"Section 9. It is hereby declared that an emergency exists for the immediate taking effect of this Act, and therefore the same shall take effect immediately after its approval."

6. That in accordance with said act of the Legislature of Porto Rico as hereinbefore stated the complainants are bound by the very nature of their business and occupation to pay an oppressive duty upon every article, goods, wares or merchandises brought from the United States into Porto Rico amounting to 10 per cent ad valorem over said goods, wares and merchandises, and if said excise duty would be paid under protest the complainants would be bound to make a protest for every case whenever a sale is effected, amounting to several thousand in one single year; and complainants would be bound to file a suit in every case protested in order to recover the amount of the excise, all of which would amount to a multiplicity of suits and legal proceedings of an unwarranted amount and put the complainants to great expense of time and money.

7. That by an Act of the Congress of the United States of America of April 12, 1900, it was enacted:

"Whenever the Legislative Assembly of Porto Rico shall have enacted and put into operation a system of local taxation to meet the necessities of the government of Porto Rico, by this Act established, and shall by resolution duly [fol. 81] passed so notify the President, he shall make proclamation thereof, and thereupon all tariff duties on merchandise and articles going into Porto Rico from the United States or coming into the United States from Porto Rico shall cease, and from and after such date, all such merchandise and articles shall be entered at the several ports of entry free of duty; and in no event shall any duties be collected after the first day of March, nineteen hundred and two, on merchandise and articles going into Porto Rico from the United States or coming into the United States from Porto Rico."

And by another act of Congress of March 2, 1917, it was enacted:

"Section 58. That all laws or parts of laws applicable to Porto Rico not in conflict with any of the provisions of this Act, including the laws relating to tariffs, customs, and duties on importations into Porto Rico prescribed by the Act of Congress entitled: 'An Act temporarily to provide revenues and a civil government for Porto Rico, and for other purposes,' approved April twelfth, nineteen hundred, are hereby continued in effect, and all laws and parts of laws inconsistent with the provisions of this Act are hereby repealed."

8. That the complainants have been threatened by the agents of the defendant with the seizure of their property and confiscation thereof to apply the proceedings of their sale to the payment of the illegal excise tax imposed upon the wares, goods and merchandises the property of the complainants brought from the United States into Porto Rico as aforesaid. And complainants allege that by the General Tax Laws of Porto Rico the complainants are taxed and pay upon the same property an annual tax of two percent ad valorem.

9. And complainants allege that they verily believe that the defendant personally or by his agents will immediately proceed to seize and confiscate all the properties of the complainants consisting in goods, wares and merchandises [fol. 82] brought from the United States into Porto Rico to be sold in this island exactly in the same conditions in which they were manufactured in the state of their origin; and by doing so will cause permanent and irreparable injury to the complainants totally wrecking their business and depriving the complainants of their lawful property without due process of law.

Complainants allege that said tax is illegal, unlawful, oppressive and unconstitutional for the following reasons:

1. Because it constitutes double taxation inasmuch as in accordance with the General Tax Laws or Political Code of Porto Rico the same property at the same time and under the same conditions has been taxed with a previous tax ad valorem.

2. Because it is an open violation of the laws of the United States that provide that in no event shall any duties of the kind complained of in this bill of complaint be imposed upon articles brought from the United States into Porto Rico.

3. Because the proceedings to make effective said tax are inquisitorial in their nature and really provide for the confiscation of the property of these complainants without due process of law.

4. Because the act of the Legislative Assembly of Porto Rico providing for payment of taxes under protest is not applicable to excise duties, by the very nature of this tax; and because it would be impossible to make payments under protest for every automobile or part of automobiles sold and then file a suit in the court of law for recovery of the tax paid.

And your complainants allege that they have no remedy at law to right the wrong of which they now complain.

Wherefore, your complainants most humbly pray that inasmuch as the complainants are without adequate remedy at law or except in a court of equity, for the wrongs and grievances herein complained of, said complainants pray [fol. 83] that the defendant herein, his agents and all persons under his authority, be perpetually enjoined and restrained from collecting or attempting to collect from complainants under pretext of enforcing the Act of July 28, 1923 as amended, any tax of the articles mentioned in paragraph VI of the complaint herein, whether in the original packages or package or after delivery by the carrier in the original packages or otherwise, and imported from the continental United States, and from embargoing, attaching, withholding or in any manner whatsoever interfering with said articles under the excuse or pretext that said defendant is enforcing said statute, and from in any manner enforcing or attempting to enforce against complainants herein the provisions of said act as amended and from interfering with the property and business of complainants by embargoes or otherwise for the attempted collection of any tax provided for by said act and under the pretext that said attempted collection is justified by the provisions of

such act and from prosecuting complainants or prosecuting or arresting officers or employees of complainant for removing goods in the original package from the possession of the steamship company or express company or post-office, or for having in their possession goods, whether in the original package or otherwise, upon which said alleged tax has not been paid, or from removing or otherwise disposing of any such goods on which no tax has been paid, or for failure to produce upon demand of any internal revenue official a true and authentic invoice covering such goods in the original package, and from detaining — or supposed to contain articles taxable or alleged by defendant to be taxable under said act, and from holding or otherwise interfering with the same under the pretext of enforcing said act; and that pending the final determination of this cause, the defendant, and all persons under his authority, be enjoined *pendente lite*, from enforcing or attempting to enforce against the complainants any of the provisions of said statute above mentioned and from collecting or attempting to collect from complainants the tax on any of the articles, [fol. 84] and from embargoing, attaching or in any manner whatsoever interfering with the complainants' property or business under such pretext, and from prosecuting complainants from doing any of the acts mentioned herein above in this paragraph; and that defendant be further enjoined to immediately release and return to complainants all goods and merchandise of complainant seized or embargoed by defendant by reason of the failure or refusal of complainants to pay the said tax and complainants further pray that a subpoena issue, directed to the said defendant, commanding him to appear and true answer make to each and every of the matters and things hereinbefore set forth, but not under oath, an oath being hereby expressly waived. And complainants further pray for such other and further relief as to the court may deem just and proper under the circumstances and allegations of the complaint.

San Juan, Porto Rico, August 12, 1925.

Cay. Coll Cuchi, Solicitor for Complainant.

Duly sworn to by Adolfo Valdes. Jurat omitted in printing.)

[fol. 85] IN UNITED STATES DISTRICT COURT

MOTION TO DISMISS—Filed August 19, 1925

Now come the attorney General of Porto Rico and undersigned counsel, in behalf of Juan G. Gallardo, Treasurer of Porto Rico, and respectfully allege:

First. That the bill of complaint herein filed does not state facts sufficient to constitute a good cause of action in equity.

Second. That complainant has an adequate, sufficient and complete remedy at law by payment under protest, as provided by Act No. 9 of June 23rd, 1924.

Wherefore the defendant prays the court to dismiss the bill of complaint with costs.

San Juan, Porto Rico, August 19, 1925.

George C. Butte, Attorney General of Porto Rico.
J. A. Lopez Acosta, of Counsel.

Copy received this nineteenth day of August, 1925.
Cay. Coll Cuchi, Attorney for Plaintiff.

IN UNITED STATES DISTRICT COURT

FINAL DECREE—September 30, 1925

This cause came on to be heard in this term, and was submitted to the court on the pleadings filed by the parties.

It appears from the facts alleged in the complaint that the complainant, J. Ochoa & Hno., is a partnership organized according to the laws of Porto Rico, and that its business is the selling of automobiles, which are bought by the said complainant in the United States; that the amount involved in the said business is more than \$3,000, and that the Legislature of Porto Rico on July 28, 1923, passed an act levying excise taxes on the sale of automobiles, which law was amended on August 27, 1923, and on June 23, 1924. [fol. 86] It is alleged by the complainant that said act of

the Legislature of Porto Rico is unconstitutional, because the levying of said tax amounts to a tax on importations, because it imposes a double taxation, and because it imposes a tax on property. *It is also alleged that the complainant has no adequate, sufficient and expedient remedy at law.*

The defendant has filed a motion to dismiss, on the grounds that even though the facts alleged in the complaint were proven, the complainant has no right to remedy by injunction, because the tax imposed is an excise tax, imposed after the article has acquired a situs in the Island of Porto Rico, and the tax is levied and collected when the article is sold, and after it has become a part of the mass of property of the taxpayer.

The facts alleged in the complaint, the law involved in the suit, and the remedy prayed for, are identical to the facts, the law and the remedy of the cases of the Insular Motor Corp. v. Gallardo, Equity No. 1286 of this court, and with the case of Smallwood Bros. v. Gallardo, Equity No. 1285 of this court, which were decided by this court on September 18, 1925, dismissing the bill of injunction with costs.

The construction of the excise tax law of 1923, as amended on August 27, 1923, and June 23, 1924, was studied in those cases, and this court, following the decision entered in the case of West India Oil Co. v. Gallardo decided by the United States Circuit Court of Appeals, First Circuit, held that the tax imposed was a tax on sales, adopted within the powers and authority of the Legislature of Porto Rico, and was not a tax on importation or property, and that it did not constitute double taxation. This court had an opportunity to construe this law in its application, in appreciating the evidence in the case of the Insular Motor Corp. v. Gallardo, *supra*, and this court was convinced that the tax was collected after the sale of the article, and when the taxpayer's possession of the merchandise was complete.

In studying the decision rendered by the Circuit Court of [fol. 87] Appeals, First Circuit, in the West India Oil Co. case, this court came to the conclusion that said decision is controlling and binding in this case, and it is hereby

ordered, decreed and adjudged that the petition for injunction filed by the complainant be, and is hereby, dismissed with costs, to which decree the complainant duly excepts.

San Juan, Porto Rico, this thirtieth day of September, 1925.

Ira K. Wells, Judge.

IN UNITED STATES DISTRICT COURT

PETITION FOR APPEAL AND FOR SUPERSEDEAS—Filed October 8, 1925

To the Hon. Ira K. Wells, Judge of the District Court of the United States for the District of Porto Rico:

The petition of the complainants respectfully represents:

That petitioners are aggrieved by the judgment and decree herein rendered on September 30, 1925, in favor of the defendant and against the said complainants, ordering the dissolution of a preliminary injunction in this case, and that petitioners, for the reasons specified in the assignment of errors filed herewith, desire to appeal and do hereby appeal from said decree, and desire that said appeal, returnable to the Circuit Court of Appeals for the First Circuit, shall operate as a supersedeas and may suspend during the pendency of said appeal the effect of said order and decree of dissolution.

Wherefore, the petitioners pray that the said appeal may be allowed, and that, upon their giving bond in an amount to be fixed by this court, the said appeal may operate as a supersedeas and may suspend during the pendency of said appeal the effect of said decree of dissolution; that said appeal be made returnable to the United States Circuit Court of Appeals for the First Circuit, according to law, and that a transcript of the record, proceedings and papers and exhibits upon which said decree was rendered, duly authenticated, be sent to the said Circuit Court of Appeals. And petitioners pray for all general and equitable relief.

San Juan, Porto Rico, October 6, 1925.

Cay. Coll Cuchi, Solicitor for Complainants.

IN UNITED STATES DISTRICT COURT

ORDER ALLOWING APPEAL AND SUPERSEDEAS—October 8,
1925

Considering the foregoing petition this day presented it is ordered that an appeal be allowed to the petitioners and complainants in this suit, from the decree of September 18, 1925, rendered against said complainant in the above entitled and numbered cause, and that said appeal shall be returnable to the United States Circuit Court of Appeals for the First Circuit, and that upon the execution of a bond in the penalty of five thousand dollars said appeal shall operate as a supersedeas of said decree and shall suspend, until the final decree or appeal herein, the effect of the order dissolving the preliminary injunction herein, and that a transcript of the record, including all of the exhibits offered in evidence by either party, be filed in the United States Circuit Court of Appeals, according to law, as prayed for.

San Juan, Porto Rico, October 8, 1925.

Ira K. Wells, District Judge.

IN UNITED STATES DISTRICT COURT

ASSIGNMENTS OF ERROR—Filed October 8, 1925

Now, on the sixth day of October, 1925, came the said complainant, by Cay. Coll Cuchi, its solicitor, and says that the decree in said cause is erroneous and against the just rights of the said complainant, for the following reasons:

1. Because the Act No. 68 of the Legislature of Porto Rico of 1923, as amended by Act No. 1, of August 27, 1923, and by Act No. 6, of June 23, 1924, is null and void because [fols. 89 & 90] it constitutes double taxation inasmuch as in accordance with the General Tax Law or Political Code of Porto Rico the said property at the same time and under the same conditions, has been taxed with a previous tax *ad valorem*, and with a previous tax upon the occupation or business of the complainant.

2. Because the said laws are in open violation and contradiction of the laws of the Congress of the United States, that provide that in no event shall any duties of the kind complained of in the bill of complaint herein, be imposed upon articles brought from the United States into Porto Rico.

3. Because the proceedings to make said tax effective are in the nature of a confiscation of the property of this complainant, without due process of law.

San Juan, Porto Rico, October 6, 1925.

Cay. Coll Cuchi, Solicitor for Complainant.

Bond on appeal for \$5,000, approved and filed October 19, 1925, omitted in printing.

[fol. 91] Citation, in usual form, showing service on Juan G. Gallardo, omitted in printing.

[fol. 92] IN UNITED STATES DISTRICT COURT

PRECEPTE FOR TRANSCRIPT OF RECORD—Filed October 17, 1925

To the Clerk:

You are requested to take a transcript of the record to be filed in the United States Circuit Court of Appeals for the First Circuit, pursuant to an appeal allowed in the above entitled case and to include in said transcript of record the following and no other papers or exhibits, to wit:

Complaint.

Motion to Dismiss.

Decree.

Petition for an Appeal.

Order Allowing Appeal.

Assignment of Errors.

Supersedeas Bond.

The Citation.

The Præcipe.

Respectfully, Cay. Coll Cuchi, Attorney for Com-
plainants-Appellants.

[fols. 93 & 94] Clerk's certificate to foregoing transcript
omitted in printing.

[fol. 95] IN UNITED STATES DISTRICT COURT, DISTRICT OF
PORTO RICO

No. 1312. Equity

INSULAR MOTOR CORPORATION, Complainant,

v.

JUAN G. GALLARDO, Treasurer of Porto Rico, Defendant

Bill to Recover an Illegal Tax and for an Injunction

BILL OF COMPLAINT—Filed October 8, 1925

To the Honorable Ira K. Wells, Judge of the District Court
of the United States for Porto Rico:

Now come the complainant above-named, by the under-
signed solicitor, and respectfully shows:

1. That the complainant is a corporation duly organized
under the laws of Porto Rico and doing business in this
island.

The defendant, Juan G. Gallardo, is an American citizen
[fol. 96] and the Treasurer of Porto Rico, with residence
within this district, duly appointed and qualified, and act-
ing as such Treasurer during all times referred to in this
bill of complaint.

2. That the only and exclusive business of the complain-
ant consists in the sale of automobiles and automobile ac-
cessories; and that each and all of the goods and mer-

chandise sold by the complainant in its regular course of business are manufactured, produced and built in the United States, principally in the States of Michigan and New York, and brought into Porto Rico under regular invoices and bills of lading showing the State from which they are thus brought within this jurisdiction; said goods, wares and merchandise being sold by the complainants to the public at large in exactly the same conditions in which they are brought into Porto Rico without any process of further manufacture or improvement or betterment than that of their original condition.

And complainant alleges that it is engaged in the importation of auto cars from the United States to be sold in Porto Rico; that the complainant has invested in said business more than one hundred thousand dollars and that the continuation and development of said business is based entirely upon the importation of motor cars and accessories thereof from the States as aforesaid; that the complainant has imported during the past thirty days motor cars on which taxes hereinafter mentioned would exceed the sum of three thousand dollars; all of which taxes are levied against importation upon goods manufactured in the United States and imported therefrom into Porto Rico; that complainant is and will continue to import said goods during this year, upon which, unless the relief herein invoked is granted, it will be compelled to pay the said taxes to an amount not less than twenty-five thousand dollars; that the value of motor cars made in the United States to be imported by the complainant this year will amount to not less than two hundred and fifty thousand dollars.

3. That the Legislative Assembly of Porto Rico passed an Act, which was duly approved by the Governor, on the twentieth day of August, 1925, entitled "An Act to provide revenues for the People of Porto Rico by levying certain [fol. 97] sale taxes and taxes for the manufacture, use, sale and consumption of certain products and by the levying of certain excise and license taxes on certain occupations, industries or business; to impose certain penalties; to repeal the laws in force providing for excise and license taxes; and for other purposes"; said Act to be known as "Internal Revenue Law of Porto Rico"; and that by virtue

of said Internal Revenue Law and excise tax upon the goods, wares and merchandise, sold by the complainant as aforesaid, which said tax complainant alleges is an illegal, oppressive and wrongful tax, for the reasons to be hereinafter alleged, is provided for as follows:

"Section 16. There shall be collected and paid, once only, an internal revenue tax on each of the following articles:

15. Motor Vehicles. On every motor vehicle such as automobiles, trucks, tractors, autocars and trailers, by whatever name known; on chassis, motors, boates, inner tubes and solid or pneumatic tires of such vehicles; on motorcycles and launches, with or without mounted motors or motors for the same, and on solid or pneumatic tires for motorcycles and launches, with or without mounted motors Rico, a tax of seven (7) per cent ad valorem.

Persons, not residents of Porto Rico, using their own automobiles for personal use only, shall be exempt from payment of the tax prescribed by this Act for such period as they shall use the special license of the Commissioner of the Interior. On the expiration of that period or upon acquiring the regular license of the said Commission, or before, if the automobile is devoted to purposes other than the above mentioned the internal revenue tax shall be paid."

That the Legislative Assembly of Porto Rico passed a law, duly approved by the Governor, on the 23d of June, 1924, entitled "An Act providing for the payment of taxes under protest, etc.", as follows:

"Section 1. Whenever a taxpayer believes that he should not pay a tax or part thereof because he understands that it is illegal, excessive or wrongful, he shall, however, have [fol. 98] the obligation to pay the same in full upon request of the collector of taxes of his district, or of the official in charge of the collection of taxes, and shall ask the said collector or the said official in charge of the collection of taxes, should he desire to make any claim, to endorse the tax receipt specifically stating whether the said protest refers to the whole or to a part of the tax paid under protest, and setting forth the exact amount protested. The said endorsement shall be signed by the taxpayer and by the collector or officer in charge of the collection of taxes.

Section 2. After payment is made the collector of taxes, or the official in charge of the collection of taxes, shall cover the sum collected into the Treasury of Porto Rico, reporting to the Treasurer the total amount of the tax, as well as the part thereof paid under protest.

Section 3. The moment that a tax paid under protest is received, the part thereof not protested, if there be any, shall be considered as all other receipts from taxes, the amount of which is to be applied to the obligations of the Insular Government, and in the case of property taxes the part of said tax pertaining to the respective municipalities pursuant to law, shall be paid over to them. The protested part shall be covered into a special fund to be known as 'Taxes paid under protest—Trust Fund'.

Section 4. A taxpayer who shall have paid under protest the whole or part of any tax shall, within a term of not to exceed thirty days from and after the date of payment, sue the Treasurer of Porto Rico in a court of competent jurisdiction to secure the return of the amount protested. The Treasurer of Porto Rico, through the Attorney General or through the official designated by the latter from his department, shall answer the said suit within the term granted by law for the filing of answers and shall make therein, in their order, allegations to strike out particulars of the complaint and demurrers.

When the case is ready for trial the court before which [fol. 99] the action is pending shall fix the day for the trial thereof without the necessity of a request from the parties, first serving due notice on them.

When final decision is rendered, if favorable to the taxpayer, the Treasurer of Porto Rico shall proceed to return to him the amount directed in the decision to be charged against the fund 'Taxes paid under protest—Trust Funds,' referred to in section 3 hereof.

If the decision be favorable to the People of Porto Rico, the Treasurer shall cover from the fund known as "Taxes paid under protest—Trust Fund" into the proper fund such amount of the tax as directed by the court in its decision, turning over to the respective municipalities the proportion established by law in cases of property taxes.

Section 5. Either party may appeal to a higher court by filing in the court a quo his appeal within ten days after the decision is rendered, as provided by section 4 of this Act; provided that if the taxpayer be the appellant he shall file, together with the petition for appeal and in the court appealed from, a bond in such sum as the court shall fix to answer for such costs, expenses and damages as the People of Porto Rico might suffer by reason of said action.

The said appeal shall be prosecuted pursuant to the provision of law for appeals in civil cases, and the court of appeals shall hold the hearing with preference over any other matter pending before it.

Section 6. Any taxpayer filing a suit against the Treasurer of Porto Rico in accordance with the provisions of this Act shall attach to the said suit a receipt for the tax paid under protest, or a certified copy of said receipt.

Section 7. That the sum of fifteen thousand (15,000) dollars or such part thereof as may be necessary is hereby appropriated, out of any funds in the Insular Treasury, not otherwise appropriated, for the payment by the Treasurer of Porto Rico of such costs as by judgment of any competent court may be allowed to any taxpayer who shall have [fol. 100] brought suit pursuant to this Act.

Section 8. Act No. 1 of May 13, 1920, as well as all laws or parts of laws in conflict are hereby repealed: provided, that any actions, proceeding or right arising from and exercised under the act hereby repealed, shall continue under the protection and provisions thereof until its termination.

Section 9. It is hereby declared that an emergency exists for the immediate taking effect of this Act, and therefore the same shall take effect immediately after its approval."

That in accordance with the said acts of the Legislature of Porto Rico as hereinbefore stated the complainants are bound by the very nature of their business and occupation to pay an oppressive duty upon every article, goods, wares, or merchandise brought from the United States into Porto Rico amounting to 7 per cent ad valorem over said goods, wares and merchandise, and if said excise duty would be paid under protest the complainants would be bound to

make a protest for every case whenever a sale is effected, amounting to several hundred protests in one single year; and complainants would be bound to file a lawsuit in every case protested in order to recover the amount of the excise, all of which would amount to a multiplicity of suits and legal proceedings of an unwarranted amount that would put the complainants to great expense of time and money.

6. That by an Act of the Congress of the United States of America, of April 12, 1900, it was enacted:

"Whenever the Legislative Assembly of Porto Rico shall have enacted and put into operation a system of local taxation to meet the necessities of the Government of Porto Rico by this Act established, and shall by resolution duly passed so notify the President, he shall make proclamation thereof, and thereupon all tariff duties on merchandise and articles going into Porto Rico from the United States or coming into the United States from Porto Rico shall cease, and from and after such date all such merchandise and articles shall be entered at the several ports of entry free [fol. 101] of duty; and in no event shall any duties be collected after the first day of March, nineteen hundred and two, on merchandise and articles going into Porto Rico from the United States, or coming into the United States from Porto Rico."

And by another Act of Congress of March 2, 1917, it was enacted:

"Section 53. That all laws or parts of laws applicable to Porto Rico not in conflict with any of the provisions of this Act, including the laws relating to tariffs, customs, and duties on importations into Porto Rico prescribed by the Act of Congress entitled: 'An Act temporarily to provide revenues and a civil government for Porto Rico, and for other purposes,' approved April twelfth, nineteen hundred, are hereby continued in effect and all laws and parts of laws inconsistent with the provisions of this Act are hereby repealed."

That the complainants have been threatened by the agents of the defendants with the seizure of its property and confiscation thereof to apply the proceedings of their

sale to the payment of the illegal excise tax as imposed upon the wares, goods and merchandise the property of the complainant brought from the United States into Porto Rico as aforesaid; and complainant alleges that by the General Tax Laws of Porto Rico the complainant is taxed and pays upon the same property an annual tax of two per cent ad valorem.

8. And complainant alleges that it verily believes that the defendant personally or by his agents will immediately proceed to seize and confiscate all the properties of the complainant consisting in goods, wares and merchandise brought from the United States into Porto Rico to be sold in this island exactly in the same condition in which they were manufactured in the state of their origin; and by doing so will cause permanent and irreparable injury to the complainant, totally wrecking its business and depriving the complainant of its lawful property without due process of law.

[fol. 102] Complainant alleges that said tax is illegal, unlawful, oppressive and unconstitutional for the following reasons:

1. Because it constitutes double taxation inasmuch as in accordance with the General Tax Law or Political Code of Porto Rico the same property, at the same time and under the same conditions, has been taxed with a previous tax ad valorem, and with a previous tax on complainant's occupation; and with a previous sale tax.

2. Because it is an open violation of the laws of the United States that provide that in no event shall any duties of the kind complained of in this bill of complaint be imposed upon articles brought from the United States into Porto Rico.

3. Because the proceedings to make effective said tax are inquisitorial in their nature and really provide for the confiscation of the property of these complainants without due process of law.

4. Because the Act of the Legislative Assembly of Porto Rico providing for payment of taxes under protest is not applicable to excise duties by the very nature of this tax, and because it would be impossible to make payments un-

der protest for every automobile or part of automobiles sold and then file a suit in the court of law for recovery of the tax paid.

5. Because the said tax is against the Organic Law of Porto Rico and the Constitution of the United States requiring uniformity of taxation.

And your complainants allege that they have no remedy at law to right the wrong of which they now complain.

Wherefore, inasmuch as the complainant is without adequate remedy at law or except in a Court of Equity, for the wrong and grievances herein complained of, said complainant prays that the defendant herein, his agents and all persons under his authority, be perpetually enjoined and restrained from collecting or attempting to collect from complainant, under pretext of enforcing the Act of July 20, 1925, any tax on the articles mentioned in paragraph 6 of the complaint herein, whether in the original packages or [fol. 103] package or after delivery by the carrier in the original package or otherwise, and imported from the continental United States, and from embargoing, attaching, withholding or in any manner whatever interfering with said articles under the excuse or pretext that said defendant is enforcing said statutes, and from in any manner enforcing or attempting to enforce against complainant herein the provisions of said Act as amended, and from interfering with the property and business of complainant by embargoes or otherwise for the attempted collection of any tax not provided for by said Act and under the pretext that said attempted collection is justified by the provisions of such Act, and from prosecuting complainant or prosecuting or arresting officers or employees of complainant for removing goods in the original package from the possession of the steamship company or express company or post office, or for having in their possession goods, whether in the original package or otherwise, upon which said alleged tax has not been paid, or from removing or otherwise disposing of any such goods on which no tax has been paid, or for failure to produce upon demand of any internal revenue official a true and authentic invoice covering such goods in the original package, and from detaining and examining any package, original or otherwise, containing

or supposed to contain articles taxable or alleged by defendant to be taxable under said Act, and from holding or otherwise interfering with the same under the pretext of enforcing said Act; and that pending final determination of this cause the defendant, and all persons under his authority, be enjoined pendente lite from enforcing or attempting to enforce against the complainant any of the provisions of the said statute above mentioned and from collecting or attempting to collect from complainant the tax on any of the said articles, and from embargoing, attaching or in any manner whatsoever interfering with the complainant's property or business under such pretext, and from prosecuting complainant or complainant's officers or employees under such pretext and from doing any of the acts mentioned hereinabove in this paragraph; and that defendant be further enjoined to immediately release and return to the complainant all goods and merchandise of [fol. 104] complainant seized or embargoed by defendant by reason of the failure or refusal of complainant to pay the said tax, and complainant further prays that a subpoena issue directed to the said defendant, commanding him to appear and true answer make to each and every of the matters and things hereinbefore set forth, but not under oath, an oath being hereby expressly waived. And complainant further prays for such other and further relief as to the court may seem just and proper under the circumstances and allegations of the complaint.

San Juan, Porto Rico, September 29, 1925.

Cay. Coll Cuchi, Solicitor for Complainant.

Duly sworn to by Jackson C. Hitchman. Jurat omitted in printing.

IN UNITED STATES DISTRICT COURT

ANSWER—Filed November 4, 1925

To the Honorable Ira K. Wells, Judge District Court of the United States for Porto Rico:

Now come the Attorney General of Porto Rico and the undersigned counsel in behalf of the defendant, the Treas-

[fol. 105] urer of Porto Rico, and in answer to the bill of complaint filed herein respectfully alleges:

1. Defendant admits paragraph 1 of the complaint.

2. For want of information, defendant denies each and every allegation of paragraph 2 of the complaint, and especially that the goods, wares and merchandise sold by complainant, if any, are sold in the same condition in which they are received from the sellers in the United States; and defendant furthermore denies that complainant is engaged in the business of importation of cars; otherwise alleging that complainant's business is, as far as the knowledge received on information by defendant, the sale of automobiles after they are in the market and have become part of the mass of property of complainant, which sale is made not to specific persons, but to anybody who happens to buy an automobile of the make or makes in stock in the hands of complainant. Defendant furthermore denies, for want of information, the amount of money therein alleged as invested by said complainant in its business, or that the amount of taxes alleged in the complaint is the one that must be paid by said complainant. And defendant furthermore denies that the taxes involved in this suit and under collection, and for which alleged distraint was threatened, reach the sum of three thousand (3,000) dollars.

3. Defendant admits paragraph 3 of the complaint as to the approval, by the Legislature of Porto Rico, of the excise tax law of 1923, and the existence in said law of section 20, subdivision 18, taxing motor vehicles, but denies that the tax imposed and assessed by said law is illegal, oppressive or wrongful.

4. Defendant admits paragraph 4 of the complaint, but alleges that the law of payment under protest, as quoted therein has been amended by the Legislature of Porto Rico in the year of 1925.

5. Defendant, in answering paragraph 5 of the complaint, admits that plaintiff is bound to pay the seven per cent ad valorem therein alleged, but denies each and every other allegation of the said paragraph, and especially that the tax is oppressive, or that its collection will amount to

a multiplicity of suits, causing complainant any irreparable injury.

[fol. 106] 6. Defendant admits paragraph 6 of the complaint.

7. Defendant denies each and every allegation of paragraph 7 of the complaint, and especially that plaintiff has been threatened by defendant, or that any proceedings, either civil or criminal, have been instituted, or have been threatened to be instituted, against plaintiff.

8. Defendant denies each and every allegation of paragraph 8 of the complaint, and especially that defendant will seize or confiscate any property of plaintiff, or in any way will cause complainant's business an irreparable injury. And defendant especially denies that the Internal Revenue Law is unconstitutional, oppressive, or constitutes a tax on property, or in any way contradicts the Constitution of the United States or the Organic Act of Porto Rico; and defendant furthermore denies that plaintiff has no adequate remedy at law.

Special Defence

At a special defence, defendant alleges:

That the excise tax imposed and levied according to section 16, as well as the sales tax imposed and levied in accordance with section 62 of Act No. 85 of 1925, known as the Internal Revenue Law of Porto Rico, and excises assessed, imposed and collected on the sale of the article, when said article has become part of the mass of property of the taxpayer, and when the possession has been transferred by the sale from the vendor to the vendee, and after the article has acquired a situs in the Island of Porto Rico; that Act No. 85, above mentioned, is an internal revenue law approved by the Legislature of Porto Rico within the powers granted by the Organic Act of 1917, and does not contravene or oppose the Constitution of the United States, which is not per se in force in Porto Rico, nor is it contrary to any of the provisions of the Organic Act above mentioned, or to any federal statute enforceable in the island.

Wherefore, your defendant prays the court to dismiss the bill of complaint herein filed with costs against plaintiffs granting any other remedy that it may deem meet and proper.

San Juan, Porto Rico, November 3, 1925.

George C. Butte, Attorney General of Porto Rico,
J. A. Lopez Acosta, of Counsel.

[fol. 107] Notified with copy this fourth day of November, 1925.

Cay. Coll Cuchi, Attorney for Complainant.

IN UNITED STATES DISTRICT COURT

RULE TO SHOW CAUSE—Filed October 2, 1925

Whereas, in the above named cause it has been made to appear upon the bill of the complainants filed herein that a writ of injunction preliminary to the final hearings is proper, and that prima facie the complainants are entitled thereto, enjoining the defendant herein from the acts complained of and threatened to be committed.

Now, on motion of said complainants, it is ordered that the defendant appear before this District Court of the United States for Porto Rico at the court room of said court at San Juan, P. R., upon the twelfth day of October, 1925, at 9 o'clock of said day, and then and there show cause why the preliminary injunction therein prayed for should not be issued.

Further ordered that a copy of this order, certified under the hand of the clerk and seal of this court, be served upon the defendant herein together with a copy of the bill of complaint herein filed.

San Juan, P. R., October 2, 1925.

Ira K. Wells, Judge.

IN UNITED STATES DISTRICT COURT

STIPULATION AND AGREEMENT OF FACTS—Filed October 15,
1925

To the Honorable Ira K. Wells, United States District
Judge:

Now come the parties above mentioned, the plaintiffs represented by their attorney, Cay, Coll y Cuchi, and the defendant by the Attorney General of Porto Rico and the undersigned counsel, and stipulate and agree as follows:

That in the above-entitled cases, now pending trial before the United States District Court for Porto Rico, the defendant, Juan G. Gallardo, will not issue orders to institute criminal proceedings against the persons of the plaintiffs, or issue orders of attachment against their property, and on the other hand the plaintiffs agree to stipulate and file the monthly sworn statements required by Sections 63, 64, 65 and 66 of Act No. 85 (Internal Revenue [fol. 108] Law of 1925), and also to furnish the information required by the Treasurer in connection with excise taxes imposed by Section 16 of the Act above referred to. It is understood by the parties that this information is to be furnished only with the object of liquidating the tax, and that none of the parties will forfeit any right, privilege or remedy involved in the cases now before this court.

That this stipulation and agreement shall be effective and valid from the date of its approval by this court, and only until the date of the decision of these cases by this court, and no longer.

San Juan, Porto Rico, October 15, 1925.

Cay, Coll y Cuchi, Attorney for Complainant. George
C. Butte, Attorney General of Porto Rico. J. A.
Lopez Acosta, of Counsel.

Approved: Ira K. Wells, Judge.

IN UNITED STATES DISTRICT COURT

OPINION—January 8, 1926

WELLS, J.:

All of the questions in this case both of fact and of law [fol. 109] were at issue in the case of *J. Ochoa y Hermano v. Juan G. Gallardo*, Treasurer of Porto Rico, being equity case No. 1313, and the decision rendered this date therein settles the questions involved in this case.

For the reasons given in said opinion I find that there is a lack of equity shown in this case and that the complainants have and are acting in an inequitable manner in regard to these taxes. That the complainants have an adequate remedy at law, and that they have failed to show any irreparable loss or damage. That the taxes complained of are valid and legal in every respect. The petition for injunction is therefore denied and the bill dismissed at the cost of the complainants, and decree will be entered in accordance with this opinion.

Dated at ~~San Juan~~ Porto Rico, this eighth day of January, A. D. 1926.

Ira K. Wells, Judge.

In the District Court of the United States for the District
of Porto Rico

Equity. No. 1313

ADOLFO VALDES, PIO PEREZ, LUIS C. CUYAR, and SALVADOR
GARCIA, Copartners, Doing Business under the Firm Name
and Style of *J. Ochoa y Hno.*, Complainants,

v.

JUAN G. GALLARDO, Treasurer of Porto Rico, Defendant

Mr. J. Henri Brown, Attorney for Complainants.

Honorable George C. Butte, Attorney General of Porto Rico and Assistant Attorney Generals J. A. Lopez Acosta and James R. Beverley, Attorneys for the Defendant.

Opinion of District Court January 8, 1926

WELLS, J.:

The complainants are co partners, doing business under the name and style of J. Ochoa y Hno., and are all subjects of the King of Spain residing in Porto Rico, with the exception of Luis C. Cuyar, who is a citizen of the United States, residing and domiciled in the Island of Porto Rico.

The defendant, Juan G. Gallardo, is the duly qualified [fol. 110] and acting Treasurer of Porto Rico, of which he is a resident and in which he is domiciled.

The complainants are now and have been for many years engaged in the business of selling provisions, building material, supplies and other merchandise at wholesale in the City of San Juan, Porto Rico. The complainants purchase and import from the continental United States and from foreign countries all the articles sold by them in their business. They import cement from Denmark, which they sell in the original barrels in which the same is imported and they also import matches from Santo Domingo, which they also sell in their original packages.

The articles imported and sold by said complainants are subject to the Internal Revenue Law of Porto Rico passed by the 1925 Legislature.

This is a bill in equity to enjoin the enforcement, as against the complainants, of the Internal Revenue Law enacted by the Legislature of Porto Rico and approved by the Governor on August 20, 1925. The bill is founded upon allegations that the enforcement of the law and taxes imposed thereby would violate the due process and equal protection clauses of the Fourteenth Amendment and the Commerce Clause to the Constitution of the United States and also the Organic Act of Porto Rico. It alleges discriminations against imports from the United States and from foreign countries in favor of domestic products and manufactures and to unlawfully burden foreign and interstate commerce. It is also claimed that apart from interference with commerce, foreign and interstate, the taxes imposed by the law violate the principles of uniformity prescribed by the Organic Act of Porto Rico and imposes

unequal burdens on members of the same class and that the taxes are confiscatory.

Act number 85 of the Laws of Porto Rico of 1925, approved August 20, 1925, is entitled: "An act to provide revenues for the People of Porto Rico by levying certain sales tax and taxes for the manufacturers' use, sale and consumption of certain excise and license taxes on certain [fol. 111] occupations, industries or businesses; To impose certain penalties; To repeal the laws in force providing for excise and license taxes, and for other purposes."

This law is known as the Internal Revenue Law of Porto Rico and is divided into several headings and titles, as follows:

Title I. Definitions.

Title II. Excise Taxes.

Title III. Sales Taxes.

Title IV. License Taxes.

Title V. Administrative Provisions.

Title VI. Judicial and Administrative Provisions.

Title VII. General Duties of Employees of the Department of Finance in connection with the Internal Revenue Law.

This is an attack upon that part of this law designated as "Excise Taxes," which is dealt with in Title II of the Act, and the other denominated "Sales Taxes," which is dealt with in Title III of the Act.

The material sections of Title II, involving excise taxes, are as follows:

"Section 16. There shall be collected and paid, once only, an internal revenue tax on each of the following articles."

Then follows a list of 44 articles, including such things as alcohol, cigars, playing cards, matches, pianos, billiard tables, etc., and on "production, manufacture, sale, use or consumption in Porto Rico" on which varying taxes are laid. These taxes are invariably laid upon the sale, production, manufacture, use, transfer or consumption of the articles. Some of the taxes are levied on a quantitative basis, and some on an ad valorem basis.

Section 4 of the law defines the phrase "ad valorem" as follows:

"For the purposes of this Act, the phrase 'ad valorem' shall be construed to mean the cost of the article when in possession of the person, plus a reasonable profit to be estimated at ten per cent (10%) of said cost, if such person fails to prove, to the satisfaction of the Treasurer of Porto Rico, that the profit obtained on such articles is less than the aforesaid percentage: Provided, That the word 'person' as used in this section shall have the meaning given thereto in section 5 of this Act."

The word "person" is defined in section 5 to include not only the natural persons and all manufacturers or dealers, but also the partnerships, associations of all classes, limited liability joint stock companies, companies, corporations or any other artificial person.

Section 17 of the law provides:

"Dealers shall be liable for the payment of the tax upon selling or transferring the taxable article to another dealer or to a consumer."

Section 38 provides:

"The consumer shall be liable for the payment of the tax upon coming into possession of the taxable article for use or consumption in Porto Rico."

Section 39

"Taxes prescribed by this Act on the sale, transfer, use or consumption in Porto Rico of articles comprised in section 16 shall be paid by the dealer upon selling or transferring the taxable article to another dealer or to a consumer."

The material sections of Title III, involving sales taxes, are as follows:

"Section 62. There shall be levied and collected on the sale of any article, the object of commerce not specified in section 16 of this act or exempted from taxation as provided in said section, a tax of two (2) per cent on the price

or value of the daily sales of such articles, whether such sales are for cash or on credit, which tax shall be paid at the end of each month by the person making such sales."

[fol. 113] And Section 83, relating to exemptions, provides:

"Any person comprised within the provisions of Section 62 of this Act, except manufacturers whose total monthly sales do not exceed one hundred (100) dollars, shall be exempt from the payment of the tax specified in said section: Provided, That when one person alone shall have several businesses, under separate accounts, the amounts of the monthly sales of these should together amount to less than one hundred (100) dollars so as to be comprised within the exemption hereby established: Provided, further, That the tax provided by Section 62 of this Act shall not attach to (1) food stuffs; (2) fluid gas; (3) electric current; (4) fertilizers, as well as all raw materials used in the manufacture of fertilizers; (5) charcoal and wood; (6) jewels and precious and semi precious stones; (7) the sales made by agriculturists of their crops and live stock; (8) the sale of newspapers, to newspaper advertisements and literary, scientific and philosophical works and to public school text books."

The defendant Treasurer construes Section 62 of this Act covering the "Sales Taxes" as applying only to the first sale in Porto Rico and not as to any subsequent sales.

Jurisdictional Amount

This is a suit for injunction and the amount in controversy is determined by the value to the complainants of the right which they assert in good faith and is the subject of the bill, or the value to the complainants of the rights for which they pray protection, which in this case the court holds to be in excess of the sum of three thousand dollars.

Equitable Jurisdiction

It has been uniformly held that the illegality or unconstitutionality of a state or municipal tax is not of itself

a ground for equitable relief in the courts of the United States. I do not believe that any irreparable damages have been shown in this case. The damage which the complainants would suffer, as is shown by a fair consideration of all [fol. 114] the testimony, is the amount of the supposed illegal tax which they would have to pay. The result of the evidence in this case is that the complainants rely solely upon the supposed invalidity of this law.

This is a suit for an injunction to restrain the defendant Treasurer from collecting from complainants a tax which complainants have already collected in part from their customers and which money they now have in their own pockets and which was collected from their customers solely and alone by reason of the tax in question, and the complainants are now seeking to enjoin the defendant Treasurer from collecting this tax. They have collected a part of this tax from their customers and are attempting to collect it in every instance, but yet are refusing to pay it, or any part of it, to the Government, under whose law they represent to their customers they are collecting it. They now come into this court and ask this court to protect them in withholding from the Government of Porto Rico money collected by them from their customers under this tax law which they are seeking to evade.

They are virtually saying to the Government of Porto Rico, here, we have collected part of this tax which we are compelled to pay under this law from our customers, by reason of their belief that we must pay it to the Government of Porto Rico, yet now that we have this money expressly paid to us by reason of this tax and for that express purpose, we will keep the same in our pockets and not pay it to you because we think that you have no right to collect it from us. That the money we have collected from our customers and will collect in the future, by reason of this tax, under the belief of our customers that the same was to be paid to the People of Porto Rico, we will keep in our pockets. The complainants treat this law as valid when it comes to collecting the tax from their customers and invalid when it comes to paying it to the Government. They are attempting to blow hot and blow cold at the same time. He who comes into equity must come with clean

hands. It is the universal rule that equity courts will not interpose to suitors who show a lack of equitable dealing in the same subject matter.

[Vol. 115] A court of equity endeavors to enforce the doctrine of good faith and good conscience upon the defendant, but not in favor of any complainant who has himself acted outside of good conscience and good faith. He who seeks equity must do equity. Can it be said that it is equitable for the complainants to collect this tax about which they are complaining from their customers and then refuse to pay the same to the Government on the ground that it is illegal and unjust.

In the examination of Mr. Salvador Garcia, one of the complainants in this case (record, pages 37-38), he testifies as follows:

Q. Did you, during the month of September, 1925, collect from the purchasers to whom you sold any goods the two per cent sales tax?

A. We have charged the two per cent provided by the law, but we have not collected it because we sell at thirty and sixty days. Some customers have refused to pay this two per cent tax.

Q. Have you ever collected from any customer the two per cent sales tax?

A. We have collected from some customers.

Q. But you did not pay it to the Treasurer, did you?

A. We paid the amount collectible in the month of August, but as regards the amount due for September, we are awaiting the outcome of this case.

Q. So that the two per cent that you have collected from your customers during the month of September, 1925, is in your hands awaiting the outcome of this suit, is it?

Mr. Brown: He has not testified that he has collected the September tax.

A. We usually sell on terms of sixty days and we have charged our customers on that basis, but we have not collected yet, except in a few small cases where we have sold for cash.

Q. And where you sold for cash you still hold the money, do you?

A. Yes, we have the money awaiting the outcome of this case.

Q. And the two per cent which you have charged against your customers, who have thirty or sixty days bills, also de- [fol. 116] pend upon the outcome of this suit. Is that correct?

A. If we are compelled to pay we shall do so.

Q. And if you are compelled to pay you will charge the two per cent against your customers?

A. Some of them will accept it and some of them will refuse it.

Q. But you will try to collect it from your customers?

A. Yes."

Adequate Remedy at Law

Does the law of June 3rd, 1924, as amended August 20th, 1925, provide an adequate remedy at law?

Sections I and II of Act number 9 of the Special Session of the Porto Rico Legislature, 1924, provides:

"Section 1. Whenever a taxpayer believes that he should not pay a tax or part thereof because he understands that it is illegal, excessive or wrongful, he shall, however, have the obligation to pay the same in full upon request of the collector of taxes of his district, or of the official in charge of the collection of taxes, and shall ask the said collector or the said official in charge of the collection of taxes, should he desire to make any claim, to endorse the tax receipt specifically stating whether the said protest refers to the whole or to a part of the tax paid under protest, and setting forth the exact amount protested. The said endorsement shall be signed by the taxpayer and by the collector or officer in charge of the collection of taxes.

Section 2. After payment is made, the collector of taxes or the official in charge of the collection of taxes, shall cover the sum collected into the Treasury of Porto Rico, reporting to the Treasurer the total amount of the tax, as well as the part thereof paid under protest."

Sections III and IV of said Act of 1924 were amended by law number 84 of the Legislature of Porto Rico, 1925, to read as follows:

"Section 3. The moment that a tax paid under protest is received, the part thereof not protested, if there be any, [fol. 117] shall be considered as all other receipts from taxes, the amount of which is to be applied to the obligations of the Insular Government, and in the case of property taxes, the part of said tax pertaining to the respective municipalities, pursuant to law, shall be paid over to them. The protested part shall be paid covered into a special fund to be known as 'Taxes Paid Under Protest—Trust Fund,' to be there held until the final decision of a court of justice is rendered upon the legality of the collection of the taxes so protested, and likewise interest at the rate of six (6) per cent on the protested part shall be covered monthly into the said trust fund, taking the sum necessary therefor out of such moneys as may be available in the Treasury of Porto Rico, for which purpose the Treasurer of Porto Rico is hereby authorized and empowered to dispose of such moneys in the Treasury of Porto Rico.

"Section 4. A taxpayer who shall have paid under protest the whole or part of any tax shall, within a term of not to exceed thirty days from and after the date of payment, sue the Treasurer of Porto Rico in a court of competent jurisdiction, to secure the return of the amount protested, and summons shall be served on the Treasurer of Porto Rico and the Attorney General within thirty days after the time of filing such suit. If the said summons be not effected within the aforesaid term of sixty days the plaintiff's suit shall be held to be dismissed and the court shall render judgment of dismissal with prejudice as between the parties. The Attorney General, or a person designated by him, shall represent the Treasurer of Porto Rico in such suits. When any case is ready for trial the court shall set a day for the trial thereof without waiting for the parties to ask for it.

"When final decision is rendered, if favorable to the taxpayer, the Treasurer of Porto Rico shall proceed to return to him the amount directed in the decision, to be charged against the fund 'Taxes Paid Under Protest—Trust Fund,' referred to in section 3 hereof, plus interest on such account, at the rate of six (6) per cent a year, to be computed from [fol. 118] the date on which payment under protest was

made to the date on which actual return is made by the Treasurer to the taxpayer of the amount directed by the court to be returned.

"If the decision be favorable to The People of Porto Rico, the Treasurer shall cover from the fund known as 'Taxes Paid Under Protest--Trust Fund,' into the proper fund, the tax directed by the court in its decision, turning over to the respective municipality the proportion established by law in cases of property taxes."

I believe that this law covers the payment of all taxes and that the same applies to all parts of the Internal Revenue Law of 1925.

The law for the payment of taxes under protest was amended by the 1925 Legislature to cure the defects pointed out in the case of *West India Oil Company v. Gallardo*, by the Circuit Court of Appeals in their decision.

The new act seems clear and unambiguous, and is expressly devoted to the payment of taxes under protest, and I believe it provides a plain and adequate remedy at law.

Complainants claim that this law is void because both "Excise" and "Sales" taxes on sales of imports by importers in original packages are an unlawful burden upon foreign and interstate commerce.

The evidence in this case is that the complainants import cement from Denmark which is sold by them in the original barrels in which it is received, and matches from Santo Domingo which are sold by them in the original cartons in which they are imported. Both the cement and matches are received by the complainants at the dock in San Juan, Porto Rico, as their property, taken by them to their store and warehouse, and mingled with their other property and becomes a part of the stock with which they do business.

When the cement and matches are received by the complainants at the dock and taken by them to their warehouse as their property, the same is at rest and becomes part of their stock in trade.

[fol. 119] I am satisfied that this law is not a burden upon, or even a regulation of, foreign or interstate commerce.

The law as laid down by the United States Supreme Court in *Sonneborn Bros. v. Cretton*, Attorney General, 262 U. S. 506, is applicable to this case.

In this decision the Supreme Court by Chief Justice Taft, page 508, say:

"The question we have to decide is whether oil transported by appellants from New York or elsewhere outside of Texas to their waterrooms or warehouse in Texas, there held for sales in Texas in original packages of transportation, and subsequently sold and delivered in Texas in such original packages, may be made the basis of an occupation tax upon appellants, when the state tax applies to all wholesale dealers in oil engaged in making sales and delivery in Texas.

Our conclusion must depend on the answer to the question: Is this a regulation of, or a burden upon, interstate commerce? We think it is neither! The oil had come to a state of rest in the warehouse of the appellants and had become a part of their stock with which they proposed to do business as wholesale dealers in the State. The interstate transportation was at an end and whether in the original packages or not, a state tax upon the oil as property or upon its sale in the State, if the state law levied the same tax on all oil or all sales of it, without regard to origin, would be neither a regulation nor a burden of the interstate commerce of which this oil has been the subject."

The next contention of the complainants is that the "Sales Tax" law as construed and enforced by defendant discriminates unlawfully against non-domestic manufacturers and products and the *ad valorem* "Excise" on products that are produced or manufactured in Porto Rico as well as imported from the continental United States, likewise discriminated unlawfully against the non-domestic product or manufacture, and that said Act is void for repugnancy to the Constitution of the United States and the uniformity clause of the Organic Act.

[fol. 120] This is a tax upon articles imported into Porto Rico as well as upon articles produced and manufactured in Porto Rico. The sales tax rate in both instances is two per cent. The defendant Treasurer construes this as imposing the tax upon the first sale of each article in Porto Rico. The complainants insist that this works a discrimination in favor of articles manufactured in Porto Rico,

That the tax on articles, manufacturer's or producer's sale price, while on imported articles the tax is fixed upon the importer's sale price, and that in case of imported articles that the taxable value of the articles include two elements of value not included in articles produced or manufactured in Porto Rico, namely, the cost of transportation and the importer's profit.

So far as discrimination between articles is concerned, the shifting and changing rise and fall in popularity and public favor will always change the price of articles, and hence the difference in amount of sales tax levied upon the selling price. Where the rate is uniform, as I think it is in this law, I cannot see how these factors can be claimed as an illegal discrimination. The uniformity required in taxes is the uniformity of application to a class under consideration, and not uniformity in final result. A tax act is not unconstitutional because of inequality in operation, owing to different local conditions. *Flint v. Stone Tracy Co.*, 200 U. S. 107.

In an opinion handed down by the Supreme Court of the United States on April 13, 1925, in the case of *Stebbins v. Riley*, Vol. 268, Supreme Court Reports, 137, in considering the California Inheritance Tax Law of 1917, Mr. Justice Stone who handed down the opinion of the court says:

"The guaranter of the Fourteenth Amendment of the equal protection of the laws is not a guarantee of equality of operation or application of state legislation upon all citizens of a State. As was said in *Magoun v. Illinois Trust & Savings Bank*, *supra*, at page 293:

"It only prescribes that that law have the attribute of equality of operation and equality of operation does not mean indiscriminate operation on persons merely as such, but on persons according to their relations. In some circumstances it may not tax A more than B, but if A be of a different trade or profession than B, it may. . . . In other words, the State may distinguish, select and classify objects of legislation, and necessarily this power must have a wide range of discretion. *Id.* page 142."

There is no tax upon the article itself but only upon the privilege of doing certain acts. So far as the excise tax is concerned, I think that the Circuit Court of Appeals

in the case of the *West India Oil Company v. Gallardo* have settled this question. In this case the court held that the 1923 law, which is of exactly the same nature as the excise part of the law in question in this case, except as to the rates, was an excise tax and not a property tax. In the *West India Oil Company v. Gallardo* case the Circuit Court of Appeals says:

"We think it plain that this is an excise tax on sale or use, and not an import tax. On analysis, the sole basis for the appellant's elaborate argument is found in the fact that most articles of personal property subjected to this tax are in Porto Rico importations; because Porto Rico is in the main an agriculture or raw material producing country with few manufactures. But this economic fact does not affect the legal nature of the tax. It could not be seriously contended that states of the United States in which motor vehicles are not manufactured cannot levy a similar tax on sale or use without coming into conflict with the prohibition of import taxes found in article I, sec. 10, of the Constitution. Compare *Woodruff v. Parham*, 8 Wall. 123; *Machine Co. v. Gage*, 100 U. S. 676; *Brown v. Houston*, 114 U. S. 500; *American Steel & Wire Co. v. Speed*, 192 U. S. 500. Porto Rico has in this regard a like power to tax.

"Equally untenable is the contention that this is a tax on property and void for lack of uniformity. The tax is upon automobiles 'manufactured, sold or used in Porto Rico.' It is not a tax upon ownership as distinguished from the production, sale or use. See the language of Chief [fol. 122] Justice White in *Billings v. United States*, 232 U. S. 261, 280. Compare also *Brown Forman Co. v. Kentucky*, 217 U. S. 563.

"A minor contention is that the tax is void because of failure to provide for an adequate hearing as to the value of cost, to which there is or may be a 10 per cent addition. We infer that it was to meet a possible objection of this sort that section 6 was amended by Act No. 1 of the Special Session of 1923, so as to provide that *ad valorem* shall 'mean the cost plus a reasonable benefit to be estimated at 10 per cent over the amount of said cost unless (the tax payer) proves to the satisfaction of the treasurer that the profit obtained is less than said 10 per cent.'"

The complainants claim irreparable damage and destruction of business. I cannot see that any such showing has been made by them. It is true that if complainants have to pay the tax and cannot collect it all from their customers, the tax would decrease their profits. However, this is no reason whatever why the law is invalid. I have found through a long experience as a consumer that the consumer is the one who finally pays the taxes and if the manufacturer, wholesaler and retailer do not charge the tax to the consumer directly, it is always done indirectly, and that the consumer ultimately pays all taxes upon the articles he buys, and so it will be under this law. This court cannot pass upon the question as to whether the taxes are so high that the dealer cannot make his usual profits. The fact remains that the expenses of Government must be paid. If the expenses are too high the tax payer should devote his efforts to having them reduced, but the expenses of Government must be paid and the tax payer is the one who eventually has to pay them.

High taxes naturally reduce profits and probably in many cases make profit impossible, yet when they are necessary to pay the expenses of government they must be paid in one form or another. A sales tax bears on all equally and each must bear his just proportion, according to the amount he buys. This court does not believe that the complainants will pay this tax and not collect it in one form or another from their customers, and it will probably be done in the [fol. 123] same manner as they collect their freight and transportation charges. However you figure it, the consumer is the one who eventually pays all taxes upon the articles he buys. If the complainants in this case cannot obtain a fair profit upon the articles taxed under this law, it is by reason of competition or other causes over which the Government has no control and not by reason of the tax imposed by the law.

The next reason assigned by the complainants as to the validity of the law is that the exemptions contained in Section 83 are clearly arbitrary and discriminatory. Section 83 reads as follows:

"Any person comprised within the provisions of section 62 of this Act, except manufacturers whose total monthly

sales do not exceed one hundred (100) dollars, shall be exempt from the payment of the tax specified in said section; Provided, That when one person alone shall have several businesses, under separate accounts, the amounts of the monthly sales of these should together amount to less than one hundred (100) dollars so as to be comprised within the exemption hereby established; Provided, further, that the tax provided by section 62 of this Act shall not attach to (1) food stuffs; (2) fluid gas; (3) electric current; (4) fertilizers, as well as all raw materials used in the manufacture of fertilizers; (5) charcoal and wood; (6) jewels and precious and semi precious stones; (7) the sales made by agriculturists of their crops and live stock; (8) the sale of newspapers, to newspaper advertisements and literary, scientific and philosophical works and to public school text books."

A reasonable classification and exemptions has always been held to be within the powers of the legislature. Exemptions are valid as long as they are reasonable, and the amount of such exemptions is largely within the discretion of the legislature. This proposition requires no citation of authorities. Every conceivable question relating to exemption and classification were raised in regard to the United States Income Tax Law, and it was held good. The reasoning which applies there applies here.

[fol. 124] On the general subject of equality and uniformity in taxation and on exemption from taxation I copy part of the opinion in the case of *Bell's Cap R'd Co. v. Pennsylvania*, 134 U. S. page 237, which I think correctly states the law as applied to this case:

"The provision in the Fourteenth Amendment, that no State shall deny to any person within its jurisdiction the equal protection of the laws, was not intended to prevent a State from adjusting its system of taxation in all proper and reasonable ways. It may, if it chooses, exempt certain classes of property from any taxation at all such as churches, libraries and the property of charitable institutions. It may impose different specific taxes upon different trades and professions, and may vary the rates of excise upon various products; it may tax real estate and per-

sonal property in a different manner; it may tax visible property only, and not tax securities for payment of money; it may allow deductions for indebtedness, or not allow them. All such regulation, and those of like character, so long as they proceed within reasonable limits and general usage, are within the discretion of the state legislature, or the people of the State in framing their Constitution. But clear and hostile discriminations against particular persons and classes, especially such as are of an unusual character, unknown to the practice of our governments, might be obnoxious to the constitutional prohibition. It would, however, be impracticable and unwise to attempt to lay down any general rule or definition on the subject, that would include all cases. They must be decided as they arise. We think we are safe in saying that the Fourteenth Amendment was not intended to compel the State to adopt an iron rule of equal taxation. If that were its proper construction, it would not only supersede all those constitutional provisions and laws of some of the States, whose object is to secure equality of taxation, and which are usually accompanied with qualifications deemed material; but it would render nugatory those discriminations which the best interests of society require; which are necessary for the encouragement of needed and useful industries, and the discouragement of intemperance and vice; and which every State, in one form or another, deems it expedient to adopt."

It is probable that the remedy of injunction has some time been awarded with too little regard to any other consequences than those which concern the individual applying for it. But the personal consequences are not the only ones which should be kept in view in this case. When the illegalities complained of affect only the persons complaining, an injunction which restrains proceedings as to him may cause no considerable mischief, and may very properly be awarded if a sufficient case is made out; but when they affect the whole tax levy, as in this case, a court should be extremely cautious in awarding a process which will reach the cases of others not complaining, and which would seriously embarrass all the operations of Government depending on the source of revenue which by means of it would be

stopped. Courts have frequently remarked upon the impossibility of the Government's calculating with any certainty upon its revenues if the collection of taxes is subject to be arrested in every instance in which a taxpayer could make out a technical case for arresting the collection of the tax, and it is justly said that it is much better to let the individual pay to the Government the demands it makes upon him, and, if he considers them wholly or in part illegal, apply for the refunding of the money with interest afterwards.

Courts do not look with favor upon suits to enjoin the collection of taxes and an injunction will only be issued in a plain case.

All presumptions are in favor of the tax proceedings and the burden is on the one attacking the tax. Except under very special circumstances the power of taxation (which includes the collection as well as the assessing of taxes) ought not be interfered with by injunction, and I do not think that this is one of those cases.

Courts cannot pass upon the question of the policy of a tax law, or the expediency of the exercising of the taxing power, or the wisdom or fairness of the mode of distributing the burden of taxation, when no provisions of the Constitution are violated, and I do not believe they have been in this case.

I find that there is a lack of equity shown in this case in that the complainants have and are acting in an inequitable manner in regard to these taxes. That the complainants have an adequate remedy at law and that they have failed to show any irreparable loss or damage. That the taxes complained of are valid and legal in every respect. The petition for an injunction is therefore denied and the bill dismissed at the costs of the complainants and a decree will be entered in accordance with this opinion.

Dated at San Juan, Porto Rico, this eighth day of January, 1926.

Ira K. Wells, Judge.

IN UNITED STATES DISTRICT COURT

ORDER—January 16, 1926

In this case I am satisfied that the opinion rendered by this court is correct. I am satisfied that the plaintiff has no equity; that he has a plain and adequate remedy at law, and that he has not suffered any irreparable loss or injury, and that the law is constitutional, and that the plaintiff should pay the taxes. Nevertheless, I realize that the plaintiff has a right to differ with the court, and to take an appeal, and that the Circuit Court of Appeals have a right to hear this matter and decide it in accordance with justice and the facts. Although I am confident that the opinion of this court is right and supported by the law and the evidence, yet I have no desire to place the plaintiffs or the Court of Appeals in such a position where, if they differ from this court, they could not grant such relief as the facts and the law justify. It seems to me that it is proper that the Court of Appeals should pass upon this question of supersedeas bond, and while I would not grant a supersedeas bond, and do not believe one should be granted, as these suits affect the entire tax levy and it is very important to the people of the island that the Government of Porto Rico should receive its taxes with which to operate the Government, yet as the Circuit Court of Appeals must pass [fols. 127 & 128] upon the legality of this law and upon the correctness or incorrectness of the opinion rendered by this court, I believe that in justice and equity they should also pass upon the question of granting a supersedeas bond, and I am going to amend the decrees in the forty (40) cases decided and grant a stay of thirty (30) days. The order will be made in each of these cases, and the time will not be extended in my case to anybody.

It is further ordered that the plaintiff, within five (5) days from this date, will pay into this court the taxes that are now due and owing the People of Porto Rico under the law in question, and the taxes in the future within five (5) days after they become due, and that such money abide the orders of this court. Failure to so deposit said taxes with the clerk of this court shall be a waiver to any stay granted by this order, and to all rights hereunto.

Done and ordered in open court, at San Juan, Porto Rico,
this sixteenth day of January, A. D. 1926.

Ira K. Wells, Judge.

[fol. 129] IN UNITED STATES DISTRICT COURT

JOURNAL ENTRY—November 10, 1925

This case comes on to be heard upon its merits. Cay. Coll y Cuchi, Esq., appeared in behalf of the complainant, and J. A. Lopez Acosta, Assistant Attorney General of Porto Rico, appeared for the defendant. Thereupon the court heard testimony of witnesses in behalf of the complainant. Defendant introduced no testimony and the case was taken under advisement, parties to file briefs in five days.

IN UNITED STATES DISTRICT COURT

FINAL DECREE—January 18, 1926

This cause came on to be heard for final hearing at this term on the tenth day of November, A. D. 1925, all parties by counsel; and the evidence being closed, the case was thereupon submitted to the court upon written briefs filed by the parties.

[fol. 130] And having considered the pleadings, the evidence and the briefs of counsel, the court finds that all the equities in this cause are with the defendant, Juan G. Gallardo, Treasurer of Porto Rico; that there is a lack of equity shown by complainants in this case and that complainants have been and are acting in an inequitable manner in regard to the taxes sought to be enjoined in their bill of complaint herein; that complainants have an adequate remedy at law as to the matters complained of and that they have failed to show any irreparable loss or damage. The court further finds that the taxes, as demanded of complainants by defendant, and which are complained of in the bill of complaint herein, are valid and legal in every respect.

It is therefore ordered, adjudged and decreed that the petition for injunction in this cause to restrain the defendant, Juan G. Gallardo, Treasurer of Porto Rico, from assessing and collecting from complainants the taxes provided under Act No. 85 of the Legislature of Porto Rico, approved August 20, 1925, be and the same is hereby denied; and that the bill of complaint be herewith dismissed. It is further ordered, adjudged and decreed that the complainants pay all costs herein.

Done in open court at San Juan, Porto Rico, this eighteenth day of January, 1926.

Ira K. Wells, Judge.

IN UNITED STATES DISTRICT COURT

PETITION FOR APPEAL—Filed January 20, 1926

The petition of the complainant respectfully represents:

That petitioner is aggrieved by the judgment and final decree herein rendered on January 18, 1926, denying the petition for injunction and dismissing the bill of complaint in this case; and that petitioner, for the reasons specified in the assignment of errors filed herewith, desires to appeal and does hereby appeal from said decree, and desires that said appeal be returnable to the Circuit Court of Appeals for the First Circuit.

Wherefore, the petitioner prays that the said appeal be [fol. 131] allowed, returnable to the United States Circuit Court of Appeals for the First Circuit, according to law, and that a transcript of the record, proceedings, papers and exhibits upon which the said decree was rendered, duly authenticated, be sent to the said Circuit Court of Appeals for the First Circuit; and petitioner prays for all general and equitable relief. And your petitioner further prays that the proper order touching the security to be required of them be made to perfect their appeal.

San Juan, Porto Rico, January 20, 1926.

Cay, Coll y Cuchi and Cruzado Silva, by Gust. Cruzado Silva, Solicitors for Complainants.

IN UNITED STATES DISTRICT COURT

ORDER ALLOWING APPEAL—Filed January 20, 1926

Considering the foregoing petition this day presented, it is ordered that an appeal be allowed to the petitioner and complainant in this suit from the final decree of January 18, 1926, rendered against said complainant in the above-entitled and numbered case upon the giving of a bond for costs in the sum of \$300, and that said appeal shall be returnable to the United States Circuit Court of Appeals for the First Circuit, and no provision for a supersedeas bond is made in this order for the reasons stated in the order of this court of January 16, 1926, amending the decree of January 8, 1926, whereby a stay of thirty days is given until the Court of Appeals should pass upon the question of the supersedeas bond which has been denied by this court.

San Juan, Porto Rico, this twentieth day of January, 1926.

Ira K. Wells, District Judge.

[fol. 132] IN UNITED STATES DISTRICT COURT

ASSIGNMENTS OF ERROR—Filed January 20, 1926

Now, on the twentieth day of January, 1926, came the said complainant, by Cay. Coll y Cuchi, its solicitor, and says that the final decree in said cause is erroneous and against the just rights of the said complainant for the following reasons:

1. Because Act No. 85 of the Legislature of Porto Rico approved on August 20, 1925, is null and void because it constitutes double taxation, inasmuch as in accordance with the General Tax Law or Political Code of Porto Rico the said property, at the same time and under the same condition, has been taxed with a previous tax *ad valorem*, and with a previous tax upon the occupation or business of the complainant.

2. Because the said law is in open violation and contradiction of the laws of Congress of the United States, and

specially of the Act of Congress of the United States approved on April 12, 1900, and in violation of Section 53 of another Act of Congress of the United States, approved March 2, 1917.

3. Because the proceeds to make said tax effective are inquisitorial in their nature and really provide for the confiscation of the property of the complainant without due process of law.

4. Because Act No. 9, approved by the Legislative Assembly of Porto Rico on June 23, 1924, providing for payment of taxes under protest, is not applicable to excise duty by the very nature of this tax, and because it would be impossible to make payments under protest for every automobile or parts of automobiles sold and then file a suit in the court of law for the recovery of the tax paid.

5. Because the said tax is against the Organic Act of Porto Rico and the Constitution of the United States requiring uniformity of taxation.

Cay, Coll y Cuchi and Cruzado Silva, by Gust. Cruzado Silva, Solicitors for Complainants.

[fol. 133] IN UNITED STATES DISTRICT COURT

NOTICE OF FILING OF STATEMENT OF FACTS—Filed January 25, 1926

To the Attorney General of Porto Rico and to Honorable J. A. Lopez Acosta, Counsel for the Defendant, San Juan, Porto Rico:

Please take notice that the statement of facts in the above-entitled case, copy of which is annexed hereto, will be filed on the twenty first day of January, 1926.

San Juan, Porto Rico, January 25, 1926.

Coll y Cuchi and Cruzado Silva, by Gust. Cruzado Silva, Solicitors for Complainant.

Copy of the foregoing statement of facts duly acknowledged and the same being a true and correct statement of

the evidence therein contained and presented in this case, the same is hereby approved.

San Juan, P. R., January 25, 1926.

George C. Butte, by J. A. Lopez Acosta, Counsel for the Defendant.

IN UNITED STATES DISTRICT COURT

Statement of Facts

Be it remembered that this cause came on for hearing before the Honorable Ira K. Wells, judge of the District Court of the United States for Porto Rico, on the tenth day of November, in the year nineteen hundred and twenty-five, the complainant, Insular Motor Corporation, being represented by Cayetano Coll Cuchi, Esq., and the defendant, Juan G. Gallardo, Treasurer of Porto Rico, by J. A. Lopez Acosta, Esq., assistant attorney general of Porto Rico.

Whereupon FRANK L. MITCHELL, a witness called by the plaintiff, having been duly sworn, testified as follows:

[fol. 134] That his name is Frank L. Mitchell; that he lives in Pueblo Viejo, which is situated within this district; that he is engaged in the automobile business, working with the Insular Motor Corporation, which is the complainant in this case; that outside of the sale of automobiles, the Insular Motor Corporation is connected with the sale of automobile supplies; that the Insular Motor Corporation deals in automobiles and automobile supplies; that said corporation sells Buick, Chevrolet, Oldsmobile, Oakland and G. M. C. trucks; that all these cars are manufactured in the United States in the State of Michigan; that they order these cars through the General Motors Export Corporation of New York, which is a subsidiary of the General Motors Corporation of the State of New York.

Being asked by the attorney to explain to the court the way in which they made one complete order and how they received said order in Porto Rico, the witness testified: That they cable asking for the cars to be shipped as soon as possible, and they come in on a bill of lading through the New York and Porto Rico line or the Bull line; that they

cable the order under a contract; that in said contract they appear as exclusive agents in Porto Rico, for they are the distributors in Porto Rico of the General Motors Export Company.

Being asked by the attorney if the Government or any agent of the Government had made any inquiries or effort to collect any tax of any kind upon the cars brought by them into Porto Rico, the witness answered in the affirmative.

Then the attorney commands the witness to take one single instance and explain the process whereupon the Government had tried to impose or assess the tax under this new law, and the witness testified that here is an instance. The attorney then advised the witness to go slowly and describe the whole process with the papers he had there, in one single instance, to which the witness testified: That the government inspectors came to their place of business with three copies of this document here.

Mr. Coll: I would like to have this document marked for identification.

[fol. 135] The Court: It may be marked.

[Document marked "Identification No. 1, Plaintiff."]

The witness continued, testifying that the government inspectors bring the information contained in that paper, saying that there have arrived on the steamship Edith, voyage No. 100, to San Juan, Porto Rico, on the twenty fifth of September, consignment to the Insular Motor Corporation of San Juan, under bill of lading No. 75, shipped by the General Motors Export Corporation, ten (10) boxes of motor cars; that the government inspectors ask them to produce a facturas, that is invoice, covering those cars, which the corporation do produce usually if it has that; that sometimes the said government inspectors ask for said facturas or invoices when they have not arrived; that this invoice covers on one sheet ten (10) Chevrolet cars marked with the same markings as shown on the document to show the cost of the cars to the complainant corporation plus any extras, that is, low pressure tires, etc.

That then on these blue sheets is included the extra for boxing for export and for inland freight on these ten (10) cars, and on the other sheet is shown ocean freight from

New York to San Juan, the marine insurance and the landing charges; that, in fact, the total cost, landed, on the car in Porto Rico; that now then, these Government men total up those three sheets, add ten (10) per cent to that.

That said inspectors tell them that it is for our supposed profit in the sale; that from said cost plus ten (10) per cent the said inspectors calculate seven (7) per cent as a tax assessed on that shipment of cars; then they fill it out down below here and the inspector signs it; that he means to say that the inspectors calculated it, in this case, and then fill the document on the space down below it, right on their paper, that is, their calculation of tax of \$406.32 on this shipment.

That when the government inspectors do this, they do not examine the merchandise received by the corporation, and that the corporation does not handle the merchandise in any way; that in this particular case to which the witness [fol. 136] has referred, the cars were on the dock at the time of the assessment of the tax; being asked by the attorney to state in about what percentage of cases, more or less, is the tax assessed on the dock before it comes into the hands of the corporation, the witness answers that it is rather difficult for him to say, because up to date he has not kept an accurate record of the times; that the government agents make the assessment when they find that the corporation have received the invoice, but not when the corporation have received the cars; that he is not able to tell how much taxes have been assessed in the way that he has just explained, from the 20th of August up to date, but that the amount assessed by the government agents in the way just explained by him, from the 20th of August to the 31st of October, is \$2,397.42.

Whereupon the following proceedings took place:

The Court: Under this excise tax law?

Witness: Yes.

Mr. Coll: Now, if your Honor please, I want to introduce this in evidence.

Mr. Lopez: If your Honor please, I have *no* objection to the admission of the document if it is not offered in an

attempt to prove that these amounts were assessed, because they were not assessed.

Mr. Coll: That is a matter of law. The document will speak for itself and then we will argue that question.

Mr. Lopez: Then we have no objection, your Honor.

The Court: It may be admitted and marked by the reporter.

[Documents marked "Exhibit A 1" to "A 5," inclusive, plaintiff.]

Cross examination by Mr. Lopez Acosta:

Then the witness continued testifying: that he stated that he worked for the Insular Motor Corporation; that the Insular Motor Corporation is a corporation of Porto Rico, independent of the General Motors; that the only relation existing between the Insular Motor Corporation and the General Motors is that the Insular Motor Corporation is under contract with said General Motors, but distribute their products in Porto Rico; that he thinks this [fol. 137] is the only connection existing between the Insular Motor Corporation and the General Motors; that the General Motors does not own any stock in the Insular Motor Corporation; being asked if when the Insular Motor Corporation buys the cars in New York, if they do so for their own property for their own business or if they act only as an agent of the General Motors, and the witness answered that that depends a little bit on the meaning of the word "buy"; that he means in this sense: they ask the General Motors to ship cars to them and they do so; that the General Motors ship to them on 120 day documents against acceptances, trade paper, and that they do not pay for these cars until the cars have been sold and delivered; that he is not capable of saying whether the car is bought in New York or where it is bought; that he does not know who are owners of these cars when they received them on the dock in Porto Rico; being asked by the attorney of the books of the corporation show who is the owner of the cars when they are landed in Porto Rico, the witness replies that they take them into their hands and when the documents are presented to them at the bank, then they accept them on 120 days payment; that the books of the corpora-

tion show that the cars are in their possession; that he does not know who is the owner of the cars; that he has been two and a half years approximately with the Insular Motor Corporation.

Whereupon the following proceedings took place:

Mr. Lopez: May it please your Honor, I am going to get a record in the other case whether this witness testified that the cars were their own property.

Mr. Coll: Now, if you Honor please, in the way that the question is asked it is calling for a legal conclusion, and the witness, who is an intelligent witness, in the way it has been put now to him has declined to make a legal statement, that is to conclude whether the property is his or the property of the General Motors under the conditions in which the sale is made. He does not know as a legal proposition whether the cars are his or not.

The Court: He has a right to cross examine.

Mr. Coll: Yes, your Honor, I know, but the witness has [fol. 138] stated how the transaction has been made. If that shows ownership by the Insular Motor Corporation, why, all right; if not, all right.

The Court: If a person has a horse, he knows if it is his or not.

Mr. Coll: There are times when he is mistaken.

The Court: Proceed with the cross examination.

Then the witness continued testifying that when the Insular Motor Corporation buy or receive on the dock said cars, from New York, they unbox them and take them to the warehouse of the Insular Motor Corporation; that usually they tow them up with another car; that they tow them up with the same material they receive them; that the car comes in a box with the wheels off; that they do not tow them in the box, but on four wheels; that in order to get them out of the box, they hire a man to remove the box from around the car; that they open the box, put the wheels on them and do various other things, such as putting on the wind shields, for the car comes pretty well knocked down; that if he were going to enumerate the entire process, it will take some time.

That it takes a couple of mechanics a couple of hours to prepare the car to take it off the dock; that somewhat they

have to assemble the car to take it off the dock; that he spoke of a contract existing between the Insular Motor Corporation and the General Motors; that said contract is not in his possession, but in their office at stop 21; that he did not bring said contract with him because nobody asked him for it.

Being asked what are the conditions of that contract, the witness replies that it is better to get the contract because he could not attempt to quote a contract that he has not seen in the past two or three months; that he knows the conditions of that contract and can testify that they are only distributors in Porto Rico, because he knows that the contract contains those general facts; that he has read said contract a number of times.

That he cannot recall exactly the number of cars they have to sell in Porto Rico in order to comply with that contract, but they have to sell according to certain terms of the contract more than 100 Chevrolets and 100 Buicks per year; that he has forgotten the exact number, but that [fol. 139] it is very easy to get the contract if the attorney likes; that when making the contracts with the buyers here they make them in the name of the Insular Motor; that they make sales contracts as though the Insular Motor Corporation was the owner of the cars.

Being asked if they are practically the owners of the cars the witness testifies that he does not know, but he believes they are; that he has been in this business for about two and a half years; that he has not been connected with the automobile business besides his connection with the Insular Motor Corporation; that he is the assistant manager and treasurer of the Insular Motor Corporation; that as said assistant manager and treasurer of the Insular Motor Corporation he is pretty well acquainted with the form of negotiations of said corporation; that technically he knows if a car belongs to the corporation when they receive it, but not legally; that he believes they are the owners of the cars when they receive them, but he does not know. Then the attorney asks the witness the following question: Are you or are you not in your business the agent of the General Motors Corporation?

Whereupon, the following proceedings took place:

Mr. Coll: If your Honor please, that is calling for a legal conclusion. Now, the Government may ask this witness how transactions are done and from the way in which the transactions are done then the court will say if they are the agent or not or what they are. I might believe myself to be an agent and I might not be an agent, if not legally an agent. I am willing to produce the contract and that will show.

Mr. Lopez: I do not wish to sit here all afternoon wasting the time of the court to show in a roundabout way what we are trying to prove. The witness is intelligent, and he has testified before that they are doing their own business. I do not see why this witness has to elude the question and not come out with the truth.

Mr. Coll: I do not believe my brother is fair, your Honor, about making that statement about the witness. The witness has testified that the Insular Motor Corporation [fol. 140] orders cars; that they are shipped on a draft of 120 days. Now, if your Honor please, if I were put under oath and were asked whether they are agents of the General Motors or not, I myself would not be prepared to swear to that, because there are a lot of possibilities with a contract of distribution and on that account may be construed as an agency contract.

The Court: If he does not know he may say so.

Mr. Coll: He has said that, your Honor. He has said that he is willing to produce the contract but that he is not willing to say whether in the contract they are agents or subsidiaries or what. He does not know.

The Court: He may answer the question.

Then the witness continued testifying that he believes the Insular Motor Corporation has been in business in Porto Rico since either March or April, 1923; that they, the present owners of the Insular Motor, took charge of it on July 1, 1923; that they order their cars from the General Motors Export Corporation of New York City; that the concern of the General Motors in New York City is a subsidiary of the General Motors Corporation.

That they have the contract with the General Motors Export Corporation; that the Chevrolet Motor Company

manufactures the Chevrolet, the Buick Motor Corporation of Flint, Michigan, manufactures the Buick, the Olds Motor Company manufactures the Oldsmobile, the General Motor Truck Company manufactures the G. M. C. truck, and the Oakland Motor Company, he believes, is the name of the manufacturer of the Oakland car.

That when they order their cars they send a cable from here to the States, directed to the General Motors Export Corporation; that the contents of said cable usually reads as follows: "Please place our firm orders for so many cars for immediate delivery or for January delivery, or whatever it may be, and sign it IMCO"; that they have an open account with the General Motors Export Corporation; that he does not know the amount of their credit with this firm, but that on their cars they have had as high as \$75,000, he believes; that he does not know if there is a limit on it or not, for he does not remember; that he is inclined to think [fol. 141] that, in accordance with the recent arrangement made with the General Motors Export Corporation, their account with said corporation is not limited; that he does not believe so, but he is not positive of that; being asked by the attorney if, when they cable for cars from the General Motors Export Corporation and the cars are sent, they are charged to the account of the Insular Motor Corporation as credits, or are sent to be paid on delivery, the witness testified that documents are sent to the Nova Scotia Bank, with the shipping documents and the draft and copies of the invoice; that they pay to the Nova Scotia Bank when the goods are sold, for such is their present arrangement; that they have had the present arrangement for some time in August of this year; then the attorney asked if that was about two months ago, and the witness replies that he thinks it was in August when Mr. Hitchman was north; that he cannot remember the date; then the attorney asks if he can remember if it was after or before the new law went into effect, and the witness testifies; that as he recalls it, he should say that it was about the same time that Mr. Hitchman went north on the 5th of August, and it was while Mr. Hitchman was north that this new arrangement was made.

That if they make a loss on the sale of a car to a customer here in Porto Rico, said loss is charged to the Insular Mo-

tor; that they do not get a commission from the General Motors Export Corporation, but they are entitled to a discount from their factory price as dealers; that they do not get a commission for each sale; that if they make any profit from the sales of the cars in Porto Rico, the General Motors Export Corporation does not share in that profit, neither do they share in the loss, if they have any; that he does not know if they have to make a monthly or annual report to the General Motors of the business and transactions done by the Insular Motor Corporation in the automobile business in Porto Rico, but they used to do so.

That the General Motors Export Corporation has never audited their accounts here; that the General Motors Export Corporation ship to them on 120 days' time, but if the cars are not sold at the expiration of that time, the Insular [fol. 142] Motor Corporation has the right and may ask for an extension of another 120 days, and that so far as the witness knows, that is indefinite; that they have never returned cars to the General Motors Corporation after not being able to sell them; that he does not know if they have to return them, but they have never done so; referring to Exhibit A for plaintiff, the attorney asks if the agents of the Government bring three copies of this Exhibit A to the Insular Motor Corporation to find out if they have or have not received those cars, to which the witness replies that said agents ask if they have the facturas or invoices, for that is what they ask and seem to be interested in.

That when the government agents find that the Insular Motor Corporation has the factura, they take these three invoices (referring to Exhibit A for plaintiff); that those three invoices are copies of the invoices of the goods for which the General Motors Export Corporation has or will draw on the Insular Motor Corporation for these ten (10) Chevrolets; that by saying "Draw on us" the witness means that the General Motors draw at 120 days with documents, commercial papers, attached to the draft.

That the General Motors draw against the Insular Motor Corporation when they send the goods; that up to date they have met those drafts at the bank; that although the cars have not been sold, they used to meet those drafts in time; then the witness is asked to explain the transaction, and he continues testifying.

That in this particular case, invoice No. C 79388 is the invoice for the ten (10) Chevrolet cars at the factory including extra charges for top boot, bow clamps and low pressure tires; that in the case for the ten (10) cars the amount is \$4,149 even; to that sum they added the amount shown on factura No. C 79389 which is \$740, covering export boxing and inland freight on the same ten (10) cars; to that they then added the amount in this case of \$387.94 shown on factura No. C 79390; this \$387.94 is made up of ocean freight from New York to San Juan, the marine insurance, landing charges, etc.; now then, just a moment—that total is shown on this white sheet here, to which the government inspectors add the ten (10) per cent and on that sum plus the ten (10) per cent he then takes seven (7) per cent which [fol. 143] is afterwards filled in on the pink sheet where it says "I have made the investigation ordered and as a result of the same have the honor to report the following tax, \$406.32."

That then the government inspectors figure the cost to the Insular Motor Corporation of the automobile, plus the ten (10) per cent; that on the total they are charged with a seven (7) per cent tax; then the attorney asks the witness if when the agents of the Government write on Exhibit A for plaintiff those figures which he just mentioned, \$406.32, they are requested to pay the tax at that moment or if they wait till the corporation sells the cars to collect the tax, to which the witness answers that said inspectors have not requested them as yet, to his knowledge.

That they not requested him to make the payment; that to his knowledge the agents of the Government have not requested the payment of the tax since August 20, 1925; that he does not know if the government agents have requested the payment of taxes before the articles are sold; that the tax which they are obliged to pay to the Government for this excise from August 20, 1925, until October 31, 1925, amounts to \$9,397.42; that this amount refers to cars already sold.

That these cars sold have been turned over to their customers; that the Insular Motor Corporation does not ship the cars from the States to Porto Rico, but they are shipped to it; that he means to say that they receive said cars, same being shipped to them from the States.

And then the complainants rested their case.

IN UNITED STATES DISTRICT COURT

JUDGE'S CERTIFICATE TO STATEMENT OF FACTS

The complainant appellant, Insular Motor Corporation, tender and present the foregoing as its statement of the evidence in this case, and prays that the same be approved by the court and made a part of the record, and the same is accordingly done this — day of January, 1926.

The foregoing contains all the evidence, excepting exhibits, in the case in the narrative form, and where the testimony [fol. 144] money herein is set forth in the form of question and answer, it is so set forth that the evidence might be clearly understood.

San Juan, Porto Rico, this twenty fifth day of January, 1926.

Ira K. Wells, District Judge.

Citation, in usual form, showing service on Juan G. Gallardo, omitted in printing.

[fol. 145] IN UNITED STATES DISTRICT COURT

PRECED FOR TRANSCRIPT OF RECORD—Filed January 25, 1926

To the Clerk:

You are requested to take a transcript of the record to be filed in the United States Circuit Court of Appeals for the First Circuit, pursuant to an appeal allowed in the above entitled case, and to include in said transcript of the record the following and no other papers or exhibits, to wit:

Bill of complaint

Answer.

Rule to show cause.

General entry of trial.

Stipulation and agreement.

Opinion of the court of January 8, 1926.

Opinion in case No. 1313 of J. Ochoa & Hno. v. Juan G. Gallardo, Treasurer of Porto Rico.

Order of the court of January 16, 1926.

Final decree of January 19, 1926.

Petition for appeal.

Order allowing appeal.

Assignment of errors.

Statement of facts.

Citation on appeal.

Præcipe.

Respectfully, Coll y Cuchi and Cruzado Silva, by
Gust. Cruzado Silva, Solicitors for Complainants.

Copy received San Juan, Porto Rico, January 22, 1926.
J. A. Lopez Acosta, Attorney for Defendant.

[fol. 146] Bond on Appeal for \$300.00 approved; omitted
in printing.

[fol. 147] IN UNITED STATES DISTRICT COURT

CLERK'S CERTIFICATE

I, Antonio Aguayo, clerk of the District Court of the United States for Porto Rico, do hereby certify that on January 20, 1926, the complainant, The Insular Motor Corporation, deposited in the registry of this court the sum of twenty thousand six hundred and sixty eight and 95/100 dollars (\$20,668.95), as required by the order of this court of January 16, 1926.

In testimony whereof, I have hereunto set my hand and affixed the seal of said court, at San Juan, in said District, this twenty sixth day of January, A. D. 1926, and in the 150th year of the Independence of the United States of America.

Antonio Aguayo, Clerk U. S. District Court for Porto Rico. (Seal.)

IN UNITED STATES DISTRICT COURT

SUPPLEMENTARY PRACIPE FOR TRANSCRIPT OF RECORD—Filed
January 26, 1926

To Antonio Aguayo, Esq., Clerk of the District Court of
the United States for Porto Rico:

Please include in the transcript of the record in this case,
in addition to the papers, pleadings and proceedings men-
tioned in the pracipe filed herein, the following:

Certificate of the clerk of the court as to the sum paid
into court by complainants, in conformity with decretal
stay order.

Bond for cost on appeal.

San Juan, Porto Rico, this twenty-sixth day of January,
1926.

Coll y Cuchi and Cruzado Silva, by Gust. Cruzado
Silva, Solicitors for Complainants.

[fol. 148] Copy of the above supplemental pracipe for
transcript is hereby acknowledged this twenty-sixth day
of January, 1926.

J. A. Lopez Acosta, Solicitor for Defendant.

Clerk's certificate to foregoing transcript omitted in
printing.

[fol. 149] IN UNITED STATES DISTRICT COURT

EXHIBIT A, PLAINTIFF, 1312 EQUITY—Filed Nov. 10, 1925

Address all official communications to the Treasurer of Porto Rico, San Juan.

Government of Porto Rico, Department of Finance, Bureau of Internal Revenue, San Juan, P. R.

#513.

Sept. 29, 1925.

To the Internal Revenue Agent, San Juan, P. R.

SIR: Since there are no records in this office showing that the taxes on the merchandise hereinafter described, have been paid please make an investigation in this matter and proceed in accordance with the provisions of the Internal Revenue Act now in force.

Shipment arrived on Steamer Edith, No. 100, in San Juan, Porto Rico, on the 25th day of September 1925, consigned to Insular Motor Co. of San Juan, P. R. under bill of lading #75 sent by the General Motors Co. and consists of 34131-9 28 10 Boxed motor cars.

Respectfully, ———, Treasurer, by P. J. Mascaro, Asst. Chief of the Bureau of Internal Revenue.

[fol. 150] Treasurer of Porto Rico, San Juan, Porto Rico.

SIR: I have made the investigation which you ordered, and as a result of same I have the honor to inform you as follows: Tax, \$406.32.

Respectfully, Jose Ramirez Colon, Internal Revenue Agent.

Certified to be a true and correct translation. Tomas Acosta Ramid, Official Translator United States District Court for Porto Rico.

EXHIBIT A 2, PLAINTIFF, 1312

Draft No. 36024

Sept. 18, 1925.

Insular Motor Corp., San Juan, P. R.

120 dys. d. a.

Goods as per invoice of the General Motors Export Co.
as follows:

C 79390	387 94	
88	4,149 00	
89	740 00	
	<hr/>	
	5,276 94	5,276 94
		527 69
		<hr/>
		5,804 62
		7
		<hr/>
		406.3241

Draft drawn for \$5,276.94 with interest at 6% per annum
and all bank charges payable by the drawee. Tax 406.32.
Accept. Sep. 25. Due Jan. 23.

SS. "Edith." B. L. 75.

Tax \$406.32. J. R. C.

10/5/25.

Filed Nov. 10, 1925, Clerk's Office, United States District
Court.

A. Aguayo, Clerk of Court, by F. Robles, Dep. Clerk.

[fol. 151]

EXHIBIT A-3, PLAINTIFF

General Motors Export Company, New York, N. Y.

Debit Memorandum

Sept. 18th, 1925.

C79380.

Insular Motor Corporation San Juan, Porto Rico:

We debit your account with Shipping Expenses on shipment of Ten (10) Cases Automobiles per S. S. Edith Sig. Abt. 9 19 25 covered by our invoice No. C79388 89:

Ocean Freight, New York to San Juan, 2142'

@ .17 per C F	364 14
---------------	--------

Marien Insurance, \$6,070 00 at .17½ incl.

S. R. & C. C.	10 62
---------------	-------

War Risk Insurance, — at —

Counsel fees

Consular blanks

Landing charges, .01 per C F	21 42
------------------------------	-------

396 18

Less .03 per 100# on 27450#

8 24

387 94

Inc. Cert. O. C. 40295-A.

Our order No. XCOS 341319/328.

General Motors Export Company. M. M. R.

E. & O. E.

Filed Nov. 10, 1925, Clerk's Office, United States District Court.

Antonio Aguayo, Clerk of Court, by F. Robles, Dep. Clerk.

EXHIBIT A4, PLAINTIFF, 1312

Our Order No. XCOS 341319/328. S. S. "Edith."

B. O. Order No. —.

In referring to this please mention our Invoice No. C79388.

Distributor's Order No. Cable #99 6/30 & Co. #157 6/30.

R. R. Car No. N. Y. C.—#498,103.

[fol. 152] Factory Invoice No. A-19451.

Date Dispatch: September 5, 1925.

General Motors Export Company, New York, N. Y.

September 16, 1925.

Sold to Insular Motor Corporation, San Juan, Porto Rico.

Mark: I. M. C. O. San Juan 157. Made in U. S. A.

Terms: General Motors Corporation Acceptance F. O. B. Flint, Michigan.

Box number	Dimension each case, 153 x 59 x 41"			Gross weight each.	Net weight each.
				2,745 ½	1,875 ½
341319	Frame #2K-53611	Eng. #1889143			
341320	Frame #2K-53612	Eng. #1888378			
341321	Frame #2K-53610	Eng. #1888378			
341322	Frame #2K-53608	Eng. #1889178			
341323	Frame #2K-53615	Eng. #1888504			
341324	Frame #2K-53616	Eng. #1899464			
341325	Frame #2K-53609	Eng. #1891118			
341326	Frame #2K-53617	Eng. #1894280			
341327	Frame #K-53614	Eng. #1889451			
341328	Frame #2K-53613	Eng. #1888451			
	Kilos		Kilos		
	1,244 86		850 32		

Description

10 Chevrolet Superior Model "K"

Touring Cars, 5 Passenger, 4 Cylinder, Regular Model, Miles Speed-

meter, Body Color Chevrolet Gray \$399 00

Net Extra Top Boot & Bow Clamps 2 35

Low Pressure Tires 13 55

\$414 90 \$4,149 00

[fol. 153] Note.—Spanish Instruction Book included.

E. & O. E.

General Motors Export Company. E. P.

Filed Nov. 10, 1925, Clerk's Office, United States District Court.

Antonio Aguayo, Clerk of Court, by F. Robles, Dep. Clerk.

EXHIBIT A-5, PLAINTIFF, 1312

General Motors Export Company

Charge Memorandum

Reference: XCOS 341319 328. No. C-79389.

New York, N. Y., September 16, 1925.

Insular Motor Corporation, San Juan, Porto Rico:

Terms: General Motors Corp. Acceptance.

We charge your account as follows:

Description	Detail	Total
Net Extra for boxing for export	\$47 00	
Net Extra for inland freight (10 cars)	27 00	
	<hr/>	
	\$74 00	\$740 00

Case #341319 328.

R. R. Car No. NYC—#498103.

Distr Order No. Cable #99 6 30 & Co. #157 6/30.

Disp—September 5, 1925.

Model—Chevrolet Superior Model "K" Touring Cars.

Marks: I M C O San Juan 157 Made in U. S. A.

Invoice #C 79388.

E. & O. E. EP.

General Motors Export Company.

Filed Nov. 10, 1925, Clerk's Office, United States District Court.

Antonio Aguayo, Clerk of Court, by F. Robles, Deputy Clerk.

[fols. 154-156] IN UNITED STATES DISTRICT COURT

SUPPLEMENTARY PRECIPUE FOR TRANSCRIPT OF RECORD—Filed
February 23, 1926

To Antonio Aguayo, Esq., Clerk of the District Court of
the United States for Porto Rico:

Please include in the transcript of the record in this
case and send to the Circuit Court of Appeals for the First
Circuit, in addition to the papers, pleading and proceed-
ings already sent in the precipue of this case, the following:

Documents marked "Exhibits A-1" to "A-5," inclusive,
Plaintiff.

San Juan, Porto Rico, this twenty-third day of February,
1926.

Coll y Cuchi and Cruzado Silva, per Gust. Cruzado
Silva, Solicitors for Complainants.

Copy of the above supplementary precipue for sending of
Exhibits A-1 to A-5, inclusive, of Plaintiffs, to Court of
Appeals is hereby acknowledged this twenty-third day of
February, 1926.

George C. Butte, Solicitor for Defendant.

L. A.

Clerk's certificate to foregoing exhibits omitted in print-
ing.

[fol. 157] IN UNITED STATES CIRCUIT COURT OF APPEALS FOR
THE FIRST CIRCUIT, OCTOBER TERM, 1925

No. 1903

INSULAR MOTOR CORPORATION, Plaintiff-Appellant,

v.

JUAN G. GALLARDO, TEGASUTEE, Defendant-Appellee

No. 1904, T. H. SMALLWOOD et al. v. SAME

No. 1908, ARMANDO VALDES ORDONEZ et al. v. SAME

9—Rec.

No. 1923, ALFONSO ALVAREZ RODRIGUEZ et al. v. SAME

No. 1924, ENRIQUE ZORRILLA et al. v. SAME

No. 1940, ENRIQUE ZORRILLA et al. v. SAME

No. 1941, ADOLFO VALDES ORDONEZ et al. v. SAME

No. 1942, T. H. SMALLWOOD et al. v. SAME

No. 1943, INSULAR MOTOR CORPORATION v. SAME

No. 1944, ADOLFO VALDES et al. v. SAME

No. 1945, ANTONIO RULLAN et al. v. SAME

No. 1946, MARIANO RODRIGUEZ et al. v. SAME

No. 1947, JOSE LEON et al. v. SAME

No. 1948, PRIMITIVO FRANCO et al. v. SAME

No. 1949, FINLAY, WAYMOUTH & LEE, INC., v. SAME

No. 1951, RAFAEL FABIAN et al. v. SAME

No. 1952, ANDRES GANDIA et al. v. SAME

No. 1953 JOSE RODRIGUEZ et al. v. SAME

No. 1954, GABINO SANCHEZ COTERA et al. v. SAME

No. 1955, ANGEL ARABCA PORTILLA et al. v. SAME

No. 1956, FRANCISCO FORTEZA et al. v. SAME

No. 1957, ANTONIO VICENS MAGRANER et al. v. SAME

No. 1958, PEDRO BONNIN et al. v. SAME

No. 1959, JUAN COLOM et al. v. SAME

No. 1960, GABRIEL TORRES et al. v. SAME

No. 1961, TOMAS ESTAPE et al. v. SAME

No. 1962, JUAN CABRER, JR., et al. v. SAME

No. 1963, MANUEL VIDAL ALVAREZ et al. v. SAME

No. 1964, JOSE B. ALVAREZ et al. v. SAME

[fol. 158] No. 1965, FERNANDO LUIS TORO et al. v. SAME

No. 1966, EUGENIO RODRIGUEZ et al. v. SAME

No. 1967, PEDRO JUAN ARMSTRONG et al. v. SAME

No. 1968, FEDERICO TORO et al. v. SAME

No. 1969, PEDRO FULLANA et al. v. SAME

No. 1970, HENRY PARACCHINI et al. v. SAME

No. 1971, MIGUEL ROSELLO et al. v. SAME

No. 1972, FRANCISCO GAVILAN GIRALDA et al. v. SAME

No. 1973, RAFAEL TORRES ALBERTI et al. v. SAME

No. 1974, JOSE DURAN ESMORIS et al. v. SAME

No. 1975, RAMON ARBONA et al. v. SAME

No. 1976, FRANCISCO BAGES QUINONES et al. v. SAME

No. 1977, JUAN BAUZA et al. v. SAME

No. 1978, ANTONIO VIVALDI PACHECO et al. v. SAME

Appeals from the District Court of the United States for
the District of Porto Rico

Before Bingham, Johnson and Anderson, JJ.

OPINION AND JUDGMENT—September 25, 1926

JOHNSON, J.:

All these cases raise the question whether the District Court of the United States for Porto Rico had equitable jurisdiction because the complainants did not have a plain, adequate and complete remedy at law.

July 28, 1923, the Porto Rican Legislature enacted a law whose title is: "The excise tax law of Porto Rico." Under Title 2, part 1, sec. 20, the Act provided for the levying and collection, at one time only, of an Internal Revenue tax upon a long list of articles "produced, manufactured, sold or consumed in Porto Rico."

Section 33 of the Act is as follows:

"The tax hereby prescribed on articles for sale, use, consumption or exhibition in Porto Rico, except as provided in section 29 of this Act (which relates to the tax upon articles manufactured or produced in Porto Rico) shall be levied as soon as they are on the market in possession of a dealer or commission merchant or the representative thereof in this island, who shall be responsible for the payment of said taxes upon transferring said articles to another dealer or consumer, or upon acquiring them or having them in his possession, and who shall pay such taxes in one of the two following forms in accordance with such regulations as the Treasurer of Porto Rico may prescribe for the purpose: (a) Upon acquiring the taxable articles and having them in his possession, by making entries of receipt and delivery in the stock and receipt and delivery book, and by simultaneously paying the tax by cancelling the corresponding stamps on an internal revenue invoice; or (b) as he disposes of the taxable articles. Persons acquiring taxable articles through channels other than the aforesaid dealers or commission merchants or their representatives, shall pay said taxes as soon as they obtain possession of the articles and in accordance with the definition of *ad valorem* contained in this Act.

"Dealers shall be responsible for the payment of said taxes when they sell any taxable article to a consumer. The consumer shall be responsible for the payment of said tax when he acquires taxable articles, if such tax shall not have been paid."

Section 35 provides in part as follows:

"From and after the date on which this Act takes effect, every person, who, by himself or through his agents or representatives, acquires taxable articles for sale or transfer to another merchant or consumer, and on which the taxes

specified by this Act have not been paid, shall keep in his commercial establishment, from which it shall not be removed, except by authorization of the Treasurer of Porto Rico, an official book wherein entries shall be made of all taxable articles at the time they are acquired, and the corresponding entry at time of selling or otherwise disposing of them, and further, furnish all other information that the Treasurer of Porto Rico may by regulation prescribe for the purpose of determining the value and other circumstances in connection with such articles."

Some of these cases pray for an injunction to restrain the Treasurer of Porto Rico from collecting taxes levied under the provision of this Act.

By an Act approved August 20, 1925, the Legislative Assembly of Porto Rico enacted a law to supersede the Act of 1923, but providing that taxes due under the law repealed should remain in force and the Treasurer of Porto Rico be [fol. 160] empowered to make collection thereof in the same manner as provided in the repealed laws. Under this Act of 1925 a tax was authorized to be levied upon a long list of articles "sold, transferred, used or consumed in Porto Rico." The tax imposed by this Act is attacked as illegal in the other cases and an injunction is sought to prevent its collection.

June 23, 1924, the Legislative Assembly of Porto Rico passed a law entitled, "An Act providing for the payment of taxes under protest," etc., as follows:

"Section 1. Whenever a taxpayer believes that he should not pay a tax or part thereof because he understands that it is illegal, excessive or wrongful, he shall, however, have the obligation to pay the same in full upon request of the collector of taxes of his district, or of the official in charge of the collection of taxes, and shall ask the said collector or the said official in charge of the collection of taxes, should he desire to make any claim, to endorse the tax receipt specifically stating whether the said protest refers to the whole or to a part of the tax paid under protest, and setting forth the exact amount protested. The said endorsement shall be signed by the taxpayer and by the collector or officer in charge of the collection of taxes.

"Section 2. After payment is made, the collector of taxes or the official in charge of the collection of taxes, shall cover

the sum collected into the Treasury of Porto Rico, reporting to the Treasurer the total amount of the tax, as well as the part thereof paid under protest.

"Section 3. The moment that a tax paid under protest is received, the part thereof not protested, if there be any, shall be considered as all other receipts from taxes, the amount of which is to be applied to the obligations of the Insular Government, and in the case of property taxes the part of said tax pertaining to the respective municipalities pursuant to law, shall be paid over to them. The protested part shall be covered into a special fund to be known as 'Taxes paid under protest—Trust Fund.'

"Section 4. A taxpayer who shall have paid under protest the whole or part of any tax shall, within a term of not to exceed thirty days from and after the date of payment, sue the Treasurer of Porto Rico in a court of competent jurisdiction to secure the return of the amount protested, or the official in charge of the collection of taxes, shall cover [fol. 161] The Treasurer of Porto Rico, through the Attorney General or through the official designated by the latter from his department, shall answer the said suit within the term granted by law for the filing of answers and shall make therein, in their order, allegations to strike out particulars of the complaint and demurrers.

"When the case is ready for trial the court before which the action is pending shall fix the day for the trial thereof without the necessity of a request from the parties, first serving due notice on them.

"When final decision is rendered, if favorable to the taxpayer, the Treasurer of Porto Rico shall proceed to return to him the amount directed in the decision to be charged against the fund 'Taxes paid under protest—Trust Funds,' referred to in section 3 hereof.

"If the decision be favorable to The People of Porto Rico the Treasurer shall cover from the fund known as 'Taxes paid under protest—Trust Fund,' into the proper fund such amount of the tax as directed by the court in its decision, turning over to the respective municipalities the proportion established by law in cases of property taxes.

"Section 5. Either party may appeal to a higher court by filing in the court a quo his appeal within ten days after the decision is rendered, as provided by section 4 of this Act; provided, that if the taxpayer be the appellant he shall

file, together with the petition for appeal and in the court appealed from, a bond in such sum as the court shall fix to answer for such costs, expenses, and damages as The People of Porto Rico might suffer by reason of said action.

"The said appeal shall be prosecuted pursuant to the provisions of law for appeals in civil cases, and the court of appeals shall hold the hearing with preference over any other matter pending before it.

"Section 6. Any taxpayer filing a suit against the Treasurer of Porto Rico in accordance with the provisions of this Act shall attach to the said suit a receipt for the tax paid under protest, or a certified copy of said receipt.

"Section 7. That the sum of fifteen thousand (15,000) dollars or such part thereof as may be necessary is hereby appropriated, out of any funds in the Insular Treasury, not otherwise appropriated, for the payment by the Treasurer [fol. 162] of Porto Rico of such costs as by judgment of any competent court may be allowed to any taxpayer who shall have brought suit pursuant to this Act.

"Section 8. Act No. 17 of May 13, 1920, as well as all laws or parts of laws in conflict herewith are hereby repealed; provided, that any action, proceeding or right arising from and exercised under the Act hereby repealed, shall continue under the protection and provisions thereof until its termination.

"Section 9. It is hereby declared that an emergency exists for the immediate taking effect of this Act, and therefore the same shall take effect immediately after its approval."

This Act does provide a plain, adequate and complete remedy at law for the recovery of taxes paid under protest, and which was open to the appellants in all of these cases before us. The District Court so held and we think this was correct.

In *West India Oil Co. v. Gallardo*, 6 Fed. (2d) 523, the Porto Rican Act of 1923 was under consideration as well as the remedy at law which was afforded by the Public Acts of Porto Rico passed in 1920. It was there pointed out that the protesting taxpayer who afterwards attempted to recover a tax paid under protest must annex to his complaint "a certificate from the office of the Treasurer, setting forth that he has paid all his taxes," and it was there held that

the right to sue under such conditions did not constitute a plain and adequate remedy at law.

The objectionable features which were pointed out were eradicated by the Act of June 23, 1924.

There was no occasion, therefore, for the District Court to consider other questions after having found that the taxpayer had a plain, adequate and complete remedy at law in all of these cases, and all should have been dismissed, leaving the appellants to their remedy at law for the recovery of taxes paid under protest. The appellants, while admitting that the illegality or unconstitutionality of a tax is not of itself ground for equitable relief in the courts of the United States, still claim that additional equities are alleged which would give the Federal Court equitable jurisdiction.

That the illegality or unconstitutionality of a law is not sufficient ground for equitable relief has been many times [fol. 163] stated by the Supreme Court.

In *Boise Artesian Water Co. v. Boise City*, 213 U. S. 276, 282, the court said:

"It has been held uniformly that the illegality or unconstitutionality of a state or municipal tax or imposition is not of itself a ground for equitable relief in the courts of the United States," * * * and that, "in order to give equity jurisdiction there must be shown, in addition to the illegality or unconstitutionality of the tax or imposition, other circumstances bringing the case under some recognized head of equity jurisdiction, before the remedy by injunction can be awarded. The leading case on this subject is *Dows v. Chicago*, 11 Wall. 198."

In *Dodge v. Osborn*, 240 U. S. 118, in which the legality and constitutionality of the income tax law of 1913 was attacked, on the ground that, unless the collection of taxes assessed under this law was enjoined, many suits would be brought for the recovery of taxes and that, as the income tax law made the tax a lien upon the taxpayer's property, the assessment of taxes would constitute a cloud on his title. The court said:

"But these allegations are wholly inadequate under the hypothesis which we have assumed solely for the sake of the argument to sustain jurisdiction, since it is apparent on their face they allege no ground for equitable relief in

dependent of the mere complaint that the tax is illegal and unconstitutional and should not be enforced—allegations which if recognized as a basis for equitable jurisdiction would take every case where a tax was assailed because of its unconstitutionality out of the provisions of the statute and thus render it nugatory, while it is obvious that the statute plainly forbids the enjoining of a tax unless by some extraordinary and entirely exceptional circumstance its provisions are not applicable.”

The interference of the courts of the United States by injunction with the collection of taxes by a state or with its administration of matters of internal police can only be justified in a plain case not otherwise remediable. *Arkansas [fed.] Bldg. Association v. Madden*, 175 U. S. 269, 273. See also *Long v. Norman et al.*, 289 Fed. 5, a case in this Circuit.

It was the purpose of the Foraker Act and the Jones Act which succeeded it to confer sovereignty upon Porto Rico and an autonomy similar to that of the States. *Gromer v. Standard Dredging Co.*, 224 U. S. 362; *Porto Rico v. Riasa*, 227 U. S. 270.

The right to tax, for the purposes of government, one of the attributes of sovereignty was conferred upon Porto Rico by Congress and there is a stronger reason for applying the above rule to Porto Rico than to the States, in order that it may not be hampered and obstructed in raising revenue for the administration of its government. Congress has recognized the necessity of preventing the embarrassment of the United States in the collection of taxes assessed under the Internal Revenue laws by enacting section 3244 R. S., providing that, “No suit for the purpose of restraining the assessment or collection of any tax shall be maintained in any court.”

While we think this section is not applicable to Porto Rico, as pressed upon us in argument, yet, the principle involved is, and there are as strong reasons for its application to Porto Rico as to the United States.

We have therefore reached the conclusion that all these cases should be remanded to the District Court of Porto Rico with instructions to dismiss them for want of equitable jurisdiction, without prejudice to the right of the appellants

to bring actions at law in accordance with the provisions of the Act of June 23, 1924, and the amendments thereto.

The decree of the District Court is affirmed in each case, with costs in this court to the appellee.

[fol. 165] IN UNITED STATES CIRCUIT COURT OF APPEALS

[Titles omitted]

[fol. 166] PETITION FOR REHEARING

Come now the appellants and respectfully petition this Honorable Court to vacate the judgments entered in the [fol. 167] above entitled causes on September 25, 1926, and grant a rehearing upon the following grounds:

1. The Court has overlooked, and has decided directly contrary to, its own previous decision in *Camunas vs. Porto Rico Railway, Light & Power Co.*, 272 Fed., 924, in which the Court, upon careful consideration, expressly decided that a suit at law against the Treasurer of Porto Rico to recover taxes paid under protest is not such an adequate remedy at law as will defeat equitable jurisdiction.

The appellants relied upon that decision in bringing these suits, and it is unjust to prejudice them because of that reliance by now announcing a different rule.

Moreover, there are at least nine other causes now upon the docket of this court, to be argued at the coming January, 1927, session, in which the same question will be presented.

2. The Court has overlooked, and has decided directly contrary to, *Risty vs. Chicago, R. I. & P. Ry. Co.*, decided March 1, 1926, for this reason: The Porto Rican statutes expressly confine a taxpayer to the Insular courts, and exclude him from the Federal Court in suing for the recovery of a tax paid under protest. And in that case the Supreme Court of the United States expressly held that a remedy at law which may not be availed of in a Federal Court is not such an adequate remedy at law as will defeat equitable jurisdiction.

3. The decision in these causes is also contrary to *Hill vs. Wallace*, 259 U. S., 44, 62; *Union Pacific R. R. Co. vs. Weld County*, 247 U. S., 282; *Ohio Tax Cases*, 232 U. S., 576, 587; *Benedicto vs. West India & Panama Telegraph [fol. 168] Co.*, 256 Fed., 417, 421; *Benedicto vs. Porto Rican American Tobacco Co.*, 256 Fed., 422, 425; none of which is cited in the opinion of this court in these causes.

4. The Court has overlooked essential differences between these causes and *Boise Artesian Water Co. vs. Boise City*, 213 U. S., 276, and *Dodge vs. Osborn*, 240 U. S., 118, and *Long vs. Norman*, 289 Fed., 5, and has erroneously applied the principles of those decisions.

5. The Act of June 23, 1924, referred to in the opinion does not afford an adequate remedy because it does not provide for interest.

6. The judgments which this court has entered are such that the appellant cannot effectively pursue their alleged remedy at law, and there is grave danger that they will be forced to suffer a huge money loss merely because they relied upon this court's decision in the *Camunas* case, cited *supra*.

In specification of the foregoing, the Court's attention is respectfully called to the following comment:

I

In *Camunas vs. Porto Rico Ry. L. & P. Co.*, 272 Fed., 924, decided by this Court in 1921, a suit in equity to enjoin the collection of assessments under the Porto Rican Workmen's Compensation Act was resisted upon the ground, among others, that the plaintiff had a complete and adequate remedy at law. In rejecting that contention this Court, per Anderson, J., said (p. 927):

[fol. 169] "We think the defendants' contention that the plaintiff has a plain and adequate remedy at law cannot be sustained. The case is, on the facts, easily distinguishable from that of *Camunas vs. New York & P. R. S. S. Co.*, 260 Fed., 40, 49, 171 C. C. A., 76. Moreover, the views expressed in that case, to the effect that the employer had a plain and adequate remedy at law for any unlawful as-

assessment under the Workmen's Compensation Act, were grounded upon the language of section 3 of the Porto Rican Act of March 9, 1911, entitled 'An Act to provide for the payment of taxes under protest,' which provides in explicit terms that the party paying under protest may 'sue the said treasurer * * * in a court having competent jurisdiction thereto.' On the record then before the court there was not reason suggested for construing the words 'in a court having competent jurisdiction thereto' as not being broad enough to cover the federal court, if, by reason of diversity of citizenship or other ground for federal jurisdiction, the party alleging wrongful assessment had a right to resort to the federal court. Neither the Act of April 13, 1916, entitled 'An act to authorize suits against the people of Porto Rico,' nor the decisions of the Supreme Court of Porto Rico in *Sauri & Subira vs. Sepulveda*, 25 P. R., 224, and *Union Life Insurance Co. vs. Gromer*, 20 P. R., 80, were brought to the attention of the court. As it now appears that the Supreme Court of Porto Rico has construed the statute authorizing suits against the treasurer as suits against Porto Rico, and therefore permissible only to the extent authorized by the sovereign power (*Porto Rico vs. Rosaly*, 227 U. S., 270, 33 Sup. Ct., 352, 57 L. Ed., 507), and as under section 10 of the Act of April 13, 1916, it is provided 'that all such cases shall be brought only in [fol. 170] the insular district courts,' it is plain that the remedy for the recovery of taxes, paid under protest, under section 3 of the Act of March 9, 1911, is not an adequate remedy for a party having otherwise a right to resort to the federal court (*Smyth vs. Ames*, 169 U. S., 495, 516, 517, 18 Sup. Ct., 418, 42 L. Ed., 819; *Reagan vs. Farmers' Loan & Trust Co.*, 154 U. S., 362, 391, 14 Sup. Ct., 1032, 38 L. Ed., 1031; *Benedicto vs. Porto Rican American Tobacco Co.*, 256 Fed., 422, 425, 167 C. C. A., 550, and cases cited)."

The Act of April 13, 1916, there referred to, is still in force, and is as applicable to the Act of 1924 as it was to the Act of 1911. Moreover, the Act of June 23, 1924, quoted in the opinion in these causes, itself clearly requires that the suit against the Treasurer there authorized must be brought in an insular court and not in a federal court. It says that the taxpayer may "sue the Treasurer of Porto

Rico in a court of competent jurisdiction" and that is the precise phrase which was used in the Act of March 9, 1911, referred to in the *Camunas* case, *supra*, and the precise phrase which has been held *not* to be broad enough to cover a suit in the federal court. The Act of June 23, 1924, also regulates the procedure in detail. It says that the Treasurer shall answer the suit "within the term granted by law for the filing of answers and shall make therein, in their order, allegations to strike out particulars of the complaint and demurrers." It provides that when the case is ready for trial the court in which it is pending "shall fix the day for the trial thereof without the necessity of a request from the parties, first serving due notice on them." Certainly the Legislature of Porto Rico was not undertaking to tell the United States District Court how it should proceed in any cause brought before it. The Act further provides that an appeal must be taken within ten days, that if the taxpayer be the appellant he must file a bond, that the appeal "shall be presented pursuant to the provisions of law for appeals in civil cases," and that the appellate court "shall hold the hearing with preference over any other matter pending before it." Certainly this Court does not mean to say that the Legislature of Porto Rico was telling it how and when it shall hear its cases.

There thus can be no escape from the conclusion, deliberately pronounced in the *Camunas* case, that the remedy of paying the tax and suing the Treasurer to recover it back is available in the insular courts only and not in the federal court.

It is likewise impossible to escape the conclusion, also announced by this Court in the *Camunas* case, that such a remedy "is not an adequate remedy for a party having otherwise a right to resort to the federal court."

The decision here is thus utterly contrary to the decision in the *Camunas* case.

II

In the recent case of *Risty vs. Chicago, R. I. & P. Ry. Co.*, decided March 1, 1926, the Supreme Court of the United States reiterated the rule that "the test of equity jurisdiction in a federal court is the inadequacy of the

remedy on the law side of that court and not the inadequacy of the remedies afforded by the State court." Consequently, for this Court now to say that these causes cannot be maintained in equity because of the remedy provided by the Porto Rican Act of June 23, 1924, is to go directly contrary to that decision of the Supreme Court. [fol. 172] We quote from the Risty case as follows:

"The assessment, if made, would have established a lien on the appellee's property which would be a cloud on title—to say nothing of the fact that the effect of the pending proceeding would have been to subject their property to future assessments; hence the case was one for equitable relief unless there was a plain and adequate remedy at law. *Ohio Tax Cases*, 232 U. S., 576; *Shaffer vs. Carter*, 252 U. S., 37, 46; *Chicago, B. & Q. R. R. vs. Osborne*, 265 U. S., 14. The remedy by appeal to the State court under §8469 does not appear to be co-extensive with the relief which equity may give. In any event, it is not one which may be availed of at law in the federal courts, and the test of equity jurisdiction in a federal court is the inadequacy of the remedy on the law side of that court and not the inadequacy of the remedies afforded by the state courts. *Smyth vs. Ames*, 169 U. S., 466; *Chicago, B. & Q. R. R. Co. vs. Osborne*, *supra*.

"It does not appear that the state law affords a remedy by payment of the assessment and suit to recover it back, which, if it exists, can be availed of in the federal courts, *Singer Sewing Machine Co. vs. Benedict*, 229 U. S., 481, 486, or that such remedy, if available, would not entail a multiplicity of suits. It is not suggested that §6826 of the state code, which permits suits to recover taxes and forbids injunctions to restrain their collection, has any application to assessments for drainage. In *Gilseth vs. Risty*, *supra*, the Supreme Court of the State evidently did not deem that section applicable, as it did not rely upon it in denying relief. The legal remedy under the state law being uncertain, the federal court has jurisdiction in equity to enjoin the assessment. *Dawson vs. Kentucky Distilleries Co.*, 255 U. S., 288."

[fol. 173]

III

In *Hill vs. Wallace*, 259 U. S., 44, the suit was against the Secretary of Agriculture and others to enjoin the enforcement of an Act of Congress imposing a tax of 20 cents a bushel on certain contracts for the sale of grain for future delivery. It thus is exactly analogous to these causes. There the tax was imposed by Congress, and U. S. Rev. Stat., §3224, was applicable, whereas here this Court has held that §3224 is not applicable to Porto Rico. Consequently, the right to maintain a suit for an injunction is much stronger in these causes than it was in *Hill vs. Wallace*. Nevertheless, equitable jurisdiction was sustained in *Hill vs. Wallace*, and in so holding the Supreme Court said (p. 62):

"A further question arises as to whether this is a suit for an injunction against the collection of the tax in violation of §3224, Rev. Stats., in so far as it seeks relief against the District Attorney and Collector of Internal Revenue. Were this a state act, injunction would certainly issue against such officers under the decisions in *Ex parte Young*, 209 U. S., 123; *Ohio Tax Cases*, 232 U. S., 576, 587; *McFarland vs. American Sugar Refining Co.*, 241 U. S., 79, 82. Does §3224, Rev. Stats., prevent the application of similar principles to a federal taxing act? It has been held by this court, in *Dodge vs. Brady*, 240 U. S., 122, 126, that §3224 of the Revised Statutes does not prevent an injunction in a case apparently within its terms in which some extraordinary and entirely exceptional circumstances make its provisions inapplicable. See also *Dodge vs. Osborn*, 240 U. S., 118, 122. In the case before us, a sale of grain for future delivery without paying the tax will subject one to [fol. 174] heavy criminal penalties. To pay the heavy tax on each of many daily transactions which occur in the ordinary business of a member of the exchange, and then sue to recover it back would necessitate a multiplicity of suits and, indeed, would be impracticable. For the Board of Trade to refuse to apply for designation as a contract market in order to test the validity of the act would stop its 1,600 members in a branch of their business most important to themselves and to the country. We think these

exceptional and extraordinary circumstances with respect to the operation of this act make §3224 inapplicable."

With that quotation before it, we cannot believe that this Court will fail to see that its decision here does not comply with what was there said by the Supreme Court. In the cases here before the court a sale of almost any article of merchandise without paying the tax will subject the seller to "heavy criminal penalties" besides monetary penalties and seizure of his property. Here, as there, the tax is on "each of many daily transactions" and to pay the tax and then sue to recover it back "would necessitate a multiplicity of suits, and, indeed, would be impracticable."

In *Union Pacific R. R. Co. vs. Weld County*, 247 U. S., 282, the suit was to enjoin the collection of certain property taxes levied for a single year. The lower courts held that there was an adequate remedy at law, but the Supreme Court granted a certiorari and reversed their decision. We quote from the head note:

"Equity has jurisdiction to enjoin the collection of illegally discriminatory taxes, where the existence of an adequate and complete remedy at law is doubtful. [fol. 175] "Where the legal remedy by paying the taxes and suing to recover back necessitates separate actions against several school districts and towns, it will not displace the equitable remedy by injunction in one suit."

In *Ohio Tax Cases*, 232 U. S., 576, 587, the court said:

"The right to invoke the equity jurisdiction is clear; for the Act specifically makes the tax a lien upon the real estate of appellants, from the cloud of which they sought to free it by the bringing of these actions (§117 of Act; §5506, Gen. Code); and the bills alleged threatened irreparable injury through the enforcement of the penalties and coercive features of the Act. *Shelton vs. Platt*, 139 U. S., 591, 598; *Ex parte Young*, 209 U. S., 123."

In the cases at bar this court has completely overlooked "the penalties and coercive features" of the statute here involved.

In *Benedicto vs. West India & Panama Telegraph Co.*, 256 Fed., 417, 421, this court said:

"The appellants contend that the plaintiffs below had a full, adequate, and complete remedy at law, that the people of Porto Rico was an indispensable party, and that the District Court was therefore without jurisdiction. These contentions cannot be sustained. The acts and threatened acts of interference with the plaintiff's rights and business were, and are, as we have held, without warrant, and on that ground, as well as to avoid a multiplicity of suits, there is plainly jurisdiction in equity. *Ex parte Young*, 209 U. S., 123, 159, 28 Sup. Ct., 441, 52 L. Ed., 714, 13 L. R. A. (N. S.), 932, 14 Ann. Cas. 764; *Philadelphia Co. vs. Stimson*, 223 U. S., 605, 32 Sup. Ct., 340, 56 L. Ed., 570, and cases cited." [fol. 176] There certainly will be at least an equal multiplicity of suits if the appellants here be remitted to the remedy of paying the taxes and suing to recover them back, for here the taxes are payable day by day and in many cases upon many transactions during one day. Indeed, the multiplicity of suits would be so great and so expensive as almost to force at least many of the appellants to abandon their legal rights. If they do not abandon them, then this court, instead of having forty of such cases upon its docket, will have approximately forty hundred.

In *Benedicto vs. Porto Rican American Tobacco Co.*, 256 Fed. 422, this court sustained a suit in equity to enjoin enforcement of a revenue act which provided for the affixing of stamps to packages containing cigars. The analogy between that case and the cases at bar, upon this point, is complete; for here the tax is paid by means of stamps and a failure to pay subjects the property to seizure. The decision which has been rendered here is thus irreconcilable with the decision there.

None of the cases to which we have here called attention is cited in the opinion of the court in these causes.

IV

The principle laid down in *Boise Artesian Water Co. vs. Boise City*, 213 U. S. 276, is one which we do not question in the least, viz., that the illegality or unconstitutionality of the tax is not of itself a ground for equitable relief. We submit, however, that the court has erroneously applied that principle here. In that case the only remedy which Boise

City had for the collection of the license fee there involved [fol. 177] was an action at law for its recovery (see p. 286), and thus there was ample opportunity for the plaintiff in that case to set up the defense of unconstitutionality in that action at law. The plaintiff there was not required to pay the tax first. It was not in danger of being subjected to any penalties, either monetary or criminal. Its property was not subject to seizure for failure to pay the tax, and there was no likelihood of a multiplicity of suits. All the elements which were absent there are present here, and that case in no way sustains the conclusion at which the court here has arrived.

In *Dodge vs. Osborn*, 240 U. S. 118, another case cited by the court in its opinion in these causes, the court was dealing with U. S. Rev. Stat., §3224, which, as above stated, this court has held is not applicable to Porto Rico. It is worthy of note, also, that, in referring to that case in its opinion in these causes, this court inadvertently overlooked three very important words which appear in the opinion in that case. This court said that it was there alleged that unless collection was enjoined "many suits would be brought" (see p. 7 of opinion). What the Supreme Court actually said was that "many suits by other persons will be brought." There is a broad and vital distinction between "many suits" and "many suits by other persons." The fact that forty different people bring separate suits does not constitute a "multiplicity of suits" in the sense in which that term is used in speaking of equitable jurisdiction. But if one person has to bring forty suits then there is a multiplicity of suits which it is one of the pre-eminent functions of equity to avoid. In other words, in *Dodge vs. Osborn* no multiplicity of suits was threatened, [fol. 178] whereas here that of itself is a sufficient reason for resorting to equity.

The aim of equity is to be just, and there is no justice in compelling the appellants to bring a suit every day, or at least every thirty days, in order to present the question of the validity of the statute.

In *Long vs. Norman*, 289 Fed. 5, another case cited in the court's opinion in these causes, the Massachusetts statute which was there held to constitute an adequate

remedy at law expressly provided that a suit to recover back taxes might be brought in a federal court (see amended Section 48 as quoted at the bottom of page 8 of 289 Fed.). That case is thus essentially different from the cases at bar, and we earnestly urge that this court clearly erred in following *Long vs. Norman* instead of the *Camunas* case.

V

In *Proctor & Gamble Distributing Co. vs. Sherman*, 2 Fed., 2nd., 165, Judge Learned Hand, in sustaining a bill in equity to enjoin the collection of taxes, said (p. 166):

"But, quite independently of such doubts, the relief is inadequate because of the express refusal to allow interest. It is no answer to say that interest is not allowed against the sovereign. *U. S. vs. North Carolina*, 136 U. S., 211, 216, 10 S. Ct. 920, 34 L. Ed., 336; *District of Columbia vs. Johnson*, 165 U. S., 330, 338, 17 S. Ct., 362, 41 L. Ed., 734. The adequacy of the requisite legal remedy cannot be measured by the remedies one has against a person who is exempt from all process. If that were the test, the principal itself might be confiscated. While I have been referred to no decision on the point, it seems to me plain [fol. 179] that it is not an adequate remedy, after taking away a man's money as a condition of allowing him to contest his tax, merely to hand it back, when, no matter how long after, he establishes that he ought never to have been required to pay at all. Whatever may have been our archaic notions about interest, in modern financial communities a dollar to-day is worth more than a dollar next year, and to ignore the interval as immaterial is to contradict well-settled belief about value. The present use of my money is itself a thing of value, and, if I get no compensation for its loss, my remedy does not altogether right my wrong."

The Porto Rican Act of June 23, 1924, does not provide for interest, and hence does not afford an adequate remedy.

It is true that by an amendment adopted in 1925 (not referred to in this court's opinion but quoted in the opinion of the District Court at pp. 52, 53 of Record in Nos. 1944-1949), interest is now provided for; but as to such of

these cases as were brought before the Act of 1925 was enacted this objection applies.

VI

The District Court passed upon the merits and its decrees expressly adjudged that the taxes complained of are "valid and legal in every respect." By the judgments which this court has entered the decrees of the District Court are affirmed. Nothing is said in the judgments of this court about dismissing the suits for want of equitable jurisdiction without prejudice to the bringing of actions at law. Consequently, if these judgments of this court be not vacated, the legal effect will be that the decrees of [fol. 180] the District Court, as so affirmed by this court, may be set up as a bar to any action at law the appellants may bring.

To conform to the opinion of this court, its judgments should be that the decrees are reversed and the causes remanded with instructions to dismiss the bills for want of equitable jurisdiction without prejudice to the right of the appellants to bring actions at law.

But even if the judgments of this court were so modified, there still would be great danger that the appellants would be very greatly prejudiced by the action which the District Court and this court have taken. For this reason:

As a condition of staying the decrees during the pendency of the appeals, the District Court and this court both required the appellants to pay the taxes into the registry of the court. The amount paid pursuant to that requirement is now very large—several hundred thousand dollars at least. Most of it, of course, was paid more than thirty days ago, and the statute which this court says is an adequate remedy requires that the taxpayer shall pay under protest, obtain a receipt setting forth the protest, and then sue the Treasurer "within a term of not to exceed thirty days from and after the date of payments."

The vast sum which the appellants have deposited under the orders of this and the District Court will not be paid by the taxpayers. It will be paid by the clerk of the court. And there is at least grave danger that the collector to whom the money is paid will take the position that the appellants

have not brought themselves within the literal terms of the statute and refuse to give the required receipt with the necessary endorsement showing the protest. Or, it may [fol. 181] be contended that payment was made when the money was deposited, and an action to recover it may fail because not brought within thirty days. There is danger, too, that the insular courts may sustain one or the other of those positions. We do not say that such position would be sound. We do say it might be taken and sustained.

Thus, it is impossible for this court to assure the appellants that a dismissal of these suits would be actually without prejudice to an action at law. And the appellants and others similarly situated are faced with the possibility of losing amounts totalling over a million dollars because they relied upon a unanimous decision of this court (*Camunas case*, *supra*) made upon much consideration and directly deciding in their favor the precise point was adjudged against them.

We feel sure that the court will not deem it improper for us to remind it, in this connection, that when counsel were discussing the subject of adequate remedy at law upon the oral argument of these causes they were virtually stopped by a remark from the bench which, as counsel understood it, was a statement that the court was convinced that resort to equity was proper in these causes, and in consequence of that statement no further argument upon that subject was presented. That consideration, we submit, should incline the court to permit a further hearing—especially as the question will be again presented anyway in several other causes next January.

[fol. 182] We beg to add, too, that in the event that this court adheres to the decision it has announced our instructions are to apply for a writ of certiorari; and in order that the time for such application will not be running against the appellants while this application is being considered we respectfully suggest that the judgments entered herein on September 25, 1926, should be vacated and set aside now.

Wherefore, it is respectfully prayed that the judgments herein be vacated and that a rehearing of these causes be granted.

Respectfully submitted,

Francis G. Caffey, Counsel for Appellants in Nos. 1904-1943. Carroll G. Walter, Counsel for Appellants in Nos. 1944-1973. Nelson Gammons, Counsel for Appellants in Nos. 1974-1978.

We hereby certify that in our opinion the foregoing petition is well founded and that it is not presented for the purpose of delay.

Francis G. Caffey, Carroll G. Walter, Nelson Gammons.

October 14, 1926.

[fol. 183] IN UNITED STATES CIRCUIT COURT OF APPEALS

[Titles omitted]

[fol. 184] Before Bingham, Johnson and Anderson, JJ.

OPINION ON REHEARING—JANUARY 7, 1927

PER CURIAM:

In these Porto Rican tax cases, attacking the validity of taxes levied under the Acts of July 28, 1923 and of August 20, 1925, this court, in its opinion of September 25, 1926, held against the appellants' claim of equity jurisdiction. Their petition of October 14, 1926, for rehearing was allowed. The cases have been reargued exhaustively and with very great ability and learning on both sides. On full consideration, the conclusions of this court are:

I. As the attorney general of Porto Rico concedes the correctness of the decision of this court in *Camunus v. Porto Rico*, 272 Fed. 924, and *West India Oil Co. v. Gallardo*, 6 Fed. (2d) 523, the question of jurisdiction in equity turns entirely upon the construction to be given to the Porto Rican legislation of 1924, Act No. 9, and 1925, Act No. 84. This court does not now decide that under that legislation actions at law to recover taxes paid under protest may not

[fol. 185] be maintained in the Federal court. But whether, as against objection, such jurisdiction can be sustained, is not entirely plain. The legislature of Porto Rico might well make it plain, as did the legislature of Massachusetts, by a simple statute quoted in *Long v. Norman*, 289 Fed. 5, 8. Apart from this doubt (*Dawson v. Kentucky Distilleries Co.*, 255 U. S. 288, 296), the remedy at law is inadequate. For the taxes in question must be paid monthly, and the protesting tax payer must within thirty days after each payment bring his suit at law against the Treasurer. This involves multiplicity of suits by the same party to enforce the same right, and falls outside the rule laid down in *Dodge v. Osborn*, 240 U. S. 118, 121. Jurisdiction in equity must be sustained. *Risty v. Chic. R. I. & Pac. R. R.*, 270 U. S. 378; *Green v. Louisville, etc., R. R. Co.*, 244 U. S. 499, 507; *Chic., etc., R. R. Co. v. Osborne*, 265 U. S. 14, 16.

II. On the merits: the taxes on sales of goods taken into Porto Rico from the United States must be held valid under *Sonneborn v. Cureton*, 262 U. S. 506, and *West India Oil Co. v. Gallardo*, *supra*. While commerce between the United States and Porto Rico is not, technically, interstate commerce, the right of Porto Rico to tax the sales of goods arriving therein from the United States is not less than the right of a State to tax the sales of goods arriving therein in interstate commerce. *Brown v. Maryland*, 12 Wheat. 419, is not applicable to importations (so called) from the United States.

III. *Brown v. Maryland* is applicable to importations from foreign countries sold by the importers in the original packages, and the taxes as to such importations so sold must be enjoined. But the invalidity of such taxes does not affect other taxes. Compare §108 of the Act. Sales of such goods, not by the importers in the original packages, are taxable. *Waring v. The Mayor*, 8 Wall. 110. The right of Porto Rico to tax the sales of foreign importations is not greater than the corresponding right of a State.

IV. The appellants' minor contentions as to lack of uniformity and of due process are admittedly inconsistent with the decision of this court in *West India Oil Co. v. Gallardo*, *supra*. We regard the decision in that case as sound in principle and as fully supported by such cases as *Stebbins v. Riley*, 268 U. S. 137, 141, 142; *Billings v.*

United States, 232 U. S. 261, 280, 281; *Flint v. Stone Tracy Co.*, 220 U. S. 107, 151, 152; *Knowlton v. Moore*, 178 U. S. 41.

V. Pending these appeals, under order of court, the taxes in question have been impounded in the hands of the clerk of the court below. The results are:

(1) In Nos. 1944, 1945, 1946, 1947 and 1949, there must be decrees providing for:

(a) Injunctions against the collection of taxes on sales in the original packages by the importers of foreign goods.

(b) Repayment to the plaintiffs of the impounded proceeds of such taxes.

(c) Payment to the defendant of the proceeds of all other taxes.

(d) If in any of these cases question arises as to the proper division of the impounded funds under (b) and (c), *supra*, such cases are to be remanded to the court below for determination of that question.

(2) In Nos. 1903, 1904, 1908, 1923, 1924, 1940, 1941, 1942, 1943, 1955, 1956, 1957, 1958, 1959, 1960, 1962, 1964, 1965, 1966, 1967, 1968, 1969, 1971, 1972, 1975, 1976, 1977 and 1978, the money impounded is to be paid over to the defendant and the bills dismissed.

(3) In Nos. 1948, 1951, 1952, 1953, 1954, 1961, 1963, 1970, 1973 and 1974 (the balance of the cases), the present records seem inadequate for mandates for final decrees; these cases are therefore remanded to the court below for further proceedings not inconsistent with this opinion.

(4) No costs are to be allowed to either side, in any of these cases, in this court.

The decrees of this court of September 25, 1926, are vacated, and the following decrees will be entered:

In each case enumerated in V. (1) and (3), *supra*, the decree of the District Court is vacated and the case is remanded to that court for further proceedings not inconsistent with this opinion.

In each case enumerated in V. (2), *supra*, the decree of the District Court is affirmed; neither party recovers costs on appeal.

[fol. 187] IN UNITED STATES CIRCUIT COURT OF APPEALS

MINUTE ENTRY

On April 27 and 28, 1926, these cases came on to be heard together and were fully heard by the court, Honorable George H. Bingham, Honorable Charles F. Johnson and Honorable George W. Anderson, Circuit Judges, sitting.

IN UNITED STATES CIRCUIT COURT OF APPEALS

FINAL DECREE—September 25, 1926

This cause came on to be heard April 27 and 28, 1926, upon the transcript of record of the District Court of the United States for the District of Porto Rico, and was argued by counsel:

Upon consideration whereof, It is now, to wit, September 25, 1926, here ordered, adjudged and decreed as follows: The decree of the District Court is affirmed, with costs in this court to the appellee.

By the Court.

Arthur I. Charron, Clerk.

IN UNITED STATES CIRCUIT COURT OF APPEALS

Thereafter, to wit, on October 14, 1926, a petition for rehearing (page 165) was filed by the appellants upon which the following Order of Court was entered in each case on November 4, 1926:

ORDER FOR REARGUMENT—November 4, 1926

The court desires reargument in this case.

By the Court.

Arthur I. Charron, Clerk.

IN UNITED STATES CIRCUIT COURT OF APPEALS

Thereafter, to wit, on November 30 and December 1, 1926, these causes came on to be heard on reargument and were fully heard by the court, Honorable George H. Bingham, Honorable Charles F. Johnson and Honorable George W. Anderson, Circuit Judges, sitting.

Thereafter, to wit, on January 7, 1927, an Opinion of the Court (page 183) was filed and the following Order of Court was entered in each case:

ORDER VACATING DECREE—JANUARY 7, 1927.

The decree of this court of September 25, 1926, is hereby vacated.

By the Court.

Arthur I. Chatton, Clerk.

[fol. 188] IN UNITED STATES CIRCUIT COURT OF APPEALS

FINAL DECREE—JANUARY 7, 1927

This cause came on to be heard on reargument on November 30 and December 1, 1926, upon the transcript of record of the District Court of the United States for the District of Porto Rico, and was argued by counsel:

Upon consideration whereof, It is now, to wit, January 7, 1927, here ordered, adjudged and decreed as follows: The decree of the District Court is affirmed; neither party recovers costs on appeal.

By the Court.

Arthur I. Chatton, Clerk.

IN UNITED STATES CIRCUIT COURT OF APPEALS

MOTION FOR STAY OF MANDATE—Filed JANUARY 28, 1927

Come now the appellants in the above entitled causes and represent that they intend to file in the Supreme Court of the United States a petition or petitions for writs of certiorari herein.

Wherefore, they severally move that the issue of mandate upon the decrees of affirmance entered January 7, 1927, be stayed pending the determination by the Supreme Court of their aforesaid petition or petitions or until the further order of this court.

Dated January 25, 1927.

Francis G. Caffey, Attorney for Appellants.

No objections. William Catron Rigby, Atty. for Appellee.

January 27, 1927.

IN UNITED STATES CIRCUIT COURT OF APPEALS

ORDER STAYING MANDATE—January 28, 1927

It is ordered that mandate herein be, and the same hereby is, stayed until further order of court.

By the Court.

Arthur I. Charron, Clerk.

[fol. 189] Clerk's certificate to foregoing transcript omitted in printing.

Endorsed on cover: File Nos. —. U. S. Circuit Court of Appeals, First Circuit. Term No. —. T. H. Smallwood, W. F. Smallwood, A. D. Smallwood, et al., etc., petitioners, vs. Juan G. Gallardo, Treasurer of Porto Rico. Term No. —. Adolfo Valdes Ordonez, Salvador Garcia, Victor Ochoa, et al, petitioners, vs. Juan G. Gallardo, Treasurer of Porto Rico. Term No. —. Insular Motor Corporation, petitioner, vs. Juan G. Gallardo, Treasurer of Porto Rico. Petition for writs of certiorari and exhibit thereto. Filed — —, 1927. File Nos. —.

SUPREME COURT OF THE UNITED STATES

ORDER ALLOWING CERTIORARI—Filed May 16, 1927

The petition herein for writs of certiorari to the United States Circuit Court of Appeals for the First Circuit is granted and the cases are set for hearing on the first day of next term, Monday, October 3 next, after the cases heretofore assigned for that day, on the sole question whether they have become moot by virtue of the act of March 4, 1927, amending section 48 of the organic act of Porto Rico.

And it is further ordered that the duly certified copy of the transcript of the proceedings below which accompanied the petition shall be treated as though filed in response to such writ.

(6630)